NO. 16-1140

IN THE

Supreme Court of the United States

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES, D/B/A NIFLA, ET AL.,

Petitioners,

v.

XAVIER BECERRA, ATTORNEY GENERAL, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

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Petition for Writ of Certiorari filed March 20, 2017
Petition for Writ of Certiorari granted November 13, 2017

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Docket Entries:
United States District Court for the Southern District of California
No. 3:15-cv-02277-JAH-DHB

Date Filed	#	Docket Text
10/13/2015	1	COMPLAINT with Jury Demand against Edmund G. Brown, Jr, Morgan Foley, Kamala Harris, Thomas Montgomery (Filing fee $400 receipt number 0974-8485507) filed by Pregnancy Care Center, National Institute of Family and Life Advocates, Fallbrook Pregnancy Resource Center. (Attachments: # 1 Civil Case Cover Sheet, # 2 Exhibit A) The new case number is 3:15-cv-2277-JAH DHB. Judge John A. Houston and Magistrate Judge David H. Bartick are assigned to the case. (Hacker, David) (kcm) (Entered: 10/13/2015)

* * * *

Date Filed	#	Docket Text
10/21/2015	3	MOTION for Preliminary Injunction *Notice of Motion & Motion for Preliminary Injunction* by National Institute of Family and Life Advocates. (Attachments: # 1 Memo of Points and Authorities in Support of Motion for Preliminary Injunction) (Hacker, David) (jpp). (Entered: 10/21/2015)
		****
11/04/2015	8	MOTION to Dismiss for Lack of Jurisdiction *under Fed. R. Civ. P. 12(b)(1)*, MOTION to Dismiss for Failure to State a Claim *under Fed. R. Civ. P. 12(b)(6)* by Thomas Montgomery. (Attachments: # 1 Memo of Points and Authorities) (Bunton, Thomas) Attorney Thomas Dale Bunton added to party Thomas Montgomery (pty:dft) (jpp). (Entered: 11/04/2015)
		****
11/09/2015	19	MOTION to Dismiss for Failure to State a Claim by Morgan Foley. (Attachments:

Date Filed	#	Docket Text
		# 1 Notice, # 2 Proof of Service) (Boehmer, Steven) Attorney Steven Eugene Boehmer added to party Morgan Foley (pty:dft) (jpp). (Entered: 11/09/2015)
		****
11/13/2015	21	RESPONSE in Opposition re 3 MOTION for Preliminary Injunction *Notice of Motion & Motion for Preliminary Injunction* filed by Thomas Montgomery. (Bunton, Thomas) (jpp). (Entered: 11/13/2015)
11/13/2015	22	RESPONSE in Opposition re 3 MOTION for Preliminary Injunction *Notice of Motion & Motion for Preliminary Injunction* filed by Morgan Foley. (Attachments: # 1 Proof of Service) (Boehmer, Steven) (jpp). (Entered: 11/13/2015)
11/13/2015	23	RESPONSE in Opposition re 3 MOTION for Preliminary Injunction *Notice of Motion & Motion for Preliminary Injunction* filed by Kamala

Date Filed	#	Docket Text
		Harris. (Attachments: # 1 Declaration of Anthony R. Hakl) (Hakl, Anthony) (jjp). (Entered: 11/13/2015)
11/13/2015	24	REPLY - Other re 3 MOTION for Preliminary Injunction *Notice of Motion & Motion for Preliminary Injunction Objections to Evidence* filed by Kamala Harris. (Hakl, Anthony) (jpp). (Entered: 11/13/2015)
11/13/2015	25	MOTION to Dismiss, MOTION to Dismiss for Failure to State a Claim by Edmund G. Brown, Jr. (Attachments: # 1 Memo of Points and Authorities) (Hakl, Anthony) Attorney Anthony R Hakl, III added to party Edmund G. Brown, Jr (pty:dft) (jpp). (Entered: 11/13/2015)
11/13/2015	26	MOTION to Dismiss for Lack of Jurisdiction by Kamala Harris. (Attachments:# 1 Memo of Points and Authorities) (Hakl, Anthony) (jpp). (Entered: 11/13/2015)

Date Filed	#	Docket Text
		****
11/20/2015	30	REPLY to Response to Motion re 3 MOTION for Preliminary Injunction *Notice of Motion & Motion for Preliminary Injunction, Combined Reply to All Defendants Objections* filed by Fallbrook Pregnancy Resource Center, National Institute of Family and Life Advocates, Pregnancy Care Center. (Bowman, Matthew) (jpp). (Entered: 11/20/2015)
		****
12/23/2015	36	RESPONSE in Opposition re 8 MOTION to Dismiss for Lack of Jurisdiction *under Fed. R. Civ. P. 12(b)(1)* MOTION to Dismiss for Failure to State a Claim *under Fed. R. Civ. P. 12(b)(6),* 25 MOTION to Dismiss MOTION to Dismiss for Failure to State a Claim, 26 MOTION to Dismiss for Lack of Jurisdiction, 19 MOTION to Dismiss for Failure to State a Claim, *combined response brief,* filed by

Date Filed	#	Docket Text
		Fallbrook Pregnancy Resource Center, National Institute of Family and Life Advocates, Pregnancy Care Center. (Bowman, Matthew) (jpp). (Entered: 12/23/2015)
01/04/2016	37	REPLY to Response to Motion re 26 MOTION to Dismiss for Lack of Jurisdiction filed by Edmund G. Brown, Jr. (Hakl, Anthony) (jpp). (Entered: 01/04/2016)
01/04/2016	38	REPLY to Response to Motion re 26 MOTION to Dismiss for Lack of Jurisdiction filed by Kamala Harris. (Hakl, Anthony) (jpp). (Entered: 01/04/2016)
01/04/2016	39	REPLY to Response to Motion re 8 MOTION to Dismiss for Lack of Jurisdiction *under Fed. R. Civ. P. 12(b)(1)* MOTION to Dismiss for Failure to State a Claim *under Fed. R. Civ. P. 12(b)(6)* filed by Thomas Montgomery. (Bunton, Thomas) (jpp). (Entered: 01/04/2016)

Date Filed	#	Docket Text
		****
01/08/2016	43	NOTICE by Fallbrook Pregnancy Resource Center, National Institute of Family and Life Advocates, Pregnancy Care Center re *3* MOTION for Preliminary Injunction *Notice of Motion & Motion for Preliminary Injunction*, 8 MOTION to Dismiss for Lack of Jurisdiction *under Fed. R. Civ. P. 12(b)(1)* MOTION to Dismiss for Failure to State a Claim *under Fed. R. Civ. P.12(b)(6)*, 25 MOTION to Dismiss MOTION to Dismiss for Failure to State a Claim, 26 MOTION to Dismiss for Lack of Jurisdiction, 19 MOTION to Dismiss for Failure to State a Claim, *Notice of Supplemental Authority*, (Attachments: # 1 Exhibit AWF Opinion) (Bowman, Matthew) (jpp). (Entered: 01/08/2016)
		****

Date Filed	#	Docket Text
01/28/2016	45	Minute Order. for proceedings held before Judge John A. Houston: Motion for Preliminary Injunction; Motion Hearing held on 1/28/2016 submitting 3 MOTION for Preliminary Injunction filed by National Institute of Family and Life Advocates. (Court Reporter/ECR Cami Kircher). (Plaintiff Attorney Matthew Scott Bowman, Dean Broyles). (Defendant Attorney Thomas Dale Bunton, Anthony R. Hakl, Carrie Mitchell). (no document attached) (lwm) (Entered: 01/28/2016)
02/09/2016	46	ORDER denying 3 Plaintiff's Motion for Preliminary Injunction. Signed by Judge John A. Houston on 2/8/2016. (kcm) (Entered: 02/09/2016)
02/18/2016	47	NOTICE OF APPEAL to the 9th Circuit as to 46 Order denying Plaintiffs' Motion for Preliminary Injunction, by Fallbrook Pregnancy Resource Center, National Institute of Family and Life

Date Filed	#	Docket Text
		Advocates, Pregnancy Care Center. (Filing fee $505 receipt number 0974-8811466.) (Notice of Appeal electronically transmitted to US Court of Appeals.) (Attachments: # 1 Representation Statement) (Bowman, Matthew). (Modified on 2/18/2016 to edit docket text re linked Order and re attachment #1.) (akr). (Entered: 02/18/2016)
02/18/2016	48	USCA Case Number 16-55249 for 47 Notice of Appeal to 9th Circuit, filed by Pregnancy Care Center, Fallbrook Pregnancy Resource Center, National Institute of Family and Life Advocates. (akr) (Entered: 02/18/2016)
		* * * *
09/29/2017	62	ORDER granting in part and deny in part Defendants' Motions to dismiss. (Doc. Nos. 8, 19, 25, 26. Motions to dismiss filed by Defendants Becerra, Montgomery, and Foley (Doc. Nos. 8, 19, 26) are

Date Filed	#	Docket Text
		DENIED. Defendant Browns motion to dismiss (Doc. No. 25) is GRANTED. The remaining Defendants shall file an answer to the Complaint within the next forty-five (45) days from the date of this Order. Signed by Judge John A. Houston on 9/29/2017. (jpp) (Entered: 09/29/2017)
11/13/2017	63	ANSWER to 1 Complaint, *Verified Answer of Defendant Thomas Montgomery in His Official Capacity As County Counsel For San Diego County* by Thomas Montgomery. (Attachments: # 1 Proof of Service) (Bunton, Thomas) (jpp). (Entered: 11/13/2017)
11/13/2017	64	ANSWER to 1 Complaint, by Morgan Foley. (Attachments:# 1 Proof of Service) (Boehmer, Steven) (jpp). (Entered: 11/13/2017)
11/13/2017	65	ANSWER to 1 Complaint, *Xavier Becerra, in his official capacity as Attorney General of the State of California* by

Date Filed	#	Docket Text
		Kamala Harris. (Attachments: # 1 Proof of Service) (Hakl, Anthony) (Entered: 11/13/2017)

Docket Entries:
United States Court of Appeals
for the Ninth Circuit
No. 16-55249

Date Filed	#	Docket Text
02/18/2016	1	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: to be set. Preliminary Injunction Appeal. C.R. 3-3. Mediation Questionnaire due on 02/25/2016. [9870158] (RT) [Entered: 02/18/2016 03:56 PM]
		* * * *
03/17/2016	9	Filed clerk order: The opening brief [7] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from

Date Filed	#	Docket Text
		the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the excerpts of record [8] submitted by appellants. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [9905816] (KT) [Entered: 03/17/2016 02:57 PM]
		* * * *
03/23/2016	14	Filed Appellants' paper copies of excerpts of record [8] in 2 volume(s). [9914328] (KT) [Entered: 03/24/2016 01:11 PM]
		* * * *
04/14/2016	19	Filed (ECF) Appellee Morgan Foley joinder to brief [16] submitted by Appellee Kamala Harris. Date of service: 04/14/2016.

Date Filed	#	Docket Text
		(9940963] [16-55249] (Boehmer, Steven) [Entered: 04/14/2016 05:21 PM]
04/15/2016	20	Filed clerk order: The answering brief [16] submitted by Kamala Harris is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. (9942220] (KT) [Entered: 04/15/2016 03:06 PM]
04/15/2016	21	Filed clerk order: The answering brief [17] submitted by Thomas Montgomery is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper

Date Filed	#	Docket Text
		format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. The Court has reviewed the supplemental excerpts of record [18] submitted by Thomas Montgomery. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. (9942225] (KT) [Entered: 04/15/2016 03:08 PM
		* * * *
04/19/2016	24	Filed Appellee Thomas Montgomery paper copies of supplemental excerpts of record [18] in 1 volume.

Date Filed	#	Docket Text
		(9946370] (KT) [Entered: 04/20/2016 09:24 AM]
		* * * *
04/29/2016	34	Filed clerk order: The reply brief [32] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate ECF. [9958027] (KT) [Entered: 04/29/2016 09:33 AM]
		* * * *
05/16/2016	36	Filed clerk order (Deputy Clerk: HL): Preliminary injunction appeal National Institute of Family and Life Advocates v. Harris, No. 16-

Date Filed	#	Docket Text
		55249, is calendared for oral argument on Tuesday, June 14, 2016, 9:00 AM in San Francisco. The Court sua sponte consolidates, for purposes of oral argument only, National Institute of Family and Life Advocates v. Harris, No. 16-55249; Livingwell Medical Clinic, Inc. v. Harris, No. 15-17497; and A Woman's Friend Pregnancy Resource Clinic v. Harris, No. 15-17517. Counsel will be allotted argument time of 30 minutes per side. [9978604] [15-17497, 15-17517, 16-55249] (AF) [Entered: 05/16/2016 04:04 PM]
		* * * *
06/14/2016	48	ARGUED AND SUBMITTED TO DOROTHY W. NELSON, A. WALLACE TASHIMA and JOHN B. OWENS. [10014266] [15-17517, 15-17497, 16-55249] (EU) [Entered: 06/14/2016 01 :08 PM]

Date Filed	#	Docket Text
08/26/2016	49	Filed (ECF) Appellants Fallbrook Pregnancy Resource Center, Pregnancy Care Center and National Institute of Family and Life Advocates citation of supplemental authorities. Date of service: 08/26/2016. [10102666] [16-55249] (Bowman, Matthew) [Entered: 08/26/2016 02:00 PM]
08/30/2016	50	Filed (ECF) Appellants Fallbrook Pregnancy Resource Center, National Institute of Family and Life Advocates and Pregnancy Care Center citation of supplemental authorities. Date of service: 08/30/2016. [10105841] [16-55249] (Bowman, Matthew) [Entered: 08/30/2016 09:45 AM]
10/14/2016	51	FILED OPINION (DOROTHY W. NELSON, A. WALLACE TASHIMA and JOHN B. OWENS) AFFIRMED. Judge: DWN Authoring, FILED AND ENTERED JUDGMENT.

Date Filed	#	Docket Text
		[10159221] (RMM) [Entered: 10/14/2016 07:39 AM]
10/28/2016	52	Filed (ECF) Appellants Fallbrook Pregnancy Resource Center, National Institute of Family and Life Advocates and Pregnancy Care Center petition for panel rehearing and petition for rehearing en banc (from 10/14/2016 opinion). Date of service: 10/28/2016. [10177820] [16-55249]--[COURT UPDATE: Attached opinion. 10/28/2016 by SLM] (Bowman, Matthew) [Entered: 10/28/2016 11:04 AM]
11/01/2016	53	Filed order (DOROTHY W. NELSON, A. WALLACE TASHIMA and JOHN B. OWENS): Appellees are directed to file a response to the Petition for Rehearing and Rehearing En Banc filed with this court on October 28, 2016. The response shall not exceed 15 pages or 4200 words and shall be filed within 21 days of the date of this order.

Date Filed	#	Docket Text
		Parties who are registered for ECF must file the response electronically without submission of paper copies. Parties who are not registered ECF filers must file the original response plus 50 paper copies. [10182510] (AF) [Entered: 11/01/2016 04:26 PM]
		****
11/21/2016	55	Filed (ECF) Appellants Fallbrook Pregnancy Resource Center, National Institute of Family and Life Advocates and Pregnancy Care Center citation of supplemental authorities. Date of service: 11/21/2016. [10204822] [16-55249] (Bowman, Matthew) [Entered: 11/21/2016 12:57 PM]
11/22/2016	56	Filed (ECF) Appellee Thomas Montgomery response to Combo PFR Panel and En Banc (ECF Filing), Combo PFR Panel and En Banc (ECF Filing) for panel and en banc

Date Filed	#	Docket Text
		rehearing, for panel and en banc rehearing (statistical entry). Date of service: 11/22/2016. [10206098]. [16-55249] (Bunton, Thomas) [Entered: 11/22/2016 08:55 AM]
11/22/2016	57	Filed (ECF) Appellees Kamala Harris and Edmund G. Brown, Jr. response to Combo PFR Panel and En Banc (ECF Filing), Combo PFR Panel and En Banc (ECF Filing) for panel and en banc rehearing, for panel and en banc rehearing (statistical entry). Date of service: 11/22/2016. [10207692]. [16-55249] (Hakl, Anthony) [Entered: 11/22/2016 04:00 PM]
12/20/2016	58	Filed order (DOROTHY W. NELSON, A. WALLACE TASHIMA and JOHN B. OWENS) The members of the panel that decided this case voted unanimously to deny the petition for rehearing. Judge Owens voted to deny the petition

Date Filed	#	Docket Text
		for rehearing en banc. Judge Nelson and Judge Tashima recommended denial of the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. (Fed.R. App. P. 35.) The petition for rehearing and the petition for rehearing en banc are DENIED. [10239830] (WL) [Entered: 12/20/2016 10:24 AM]
12/28/2016	59	MANDATE ISSUED. (DWN, AWT and JBO) [10248281] (Turcios, Margoth) [Entered: 12/28/2016 01:16 PM]
		****
3/23/2017	63	Received notice from the Supreme Court: petition for certiorari filed on 03/20/2017. Supreme Court Number 16-1140. [10368603] (RR) [Entered: 03/23/2017 11:37 AM]

Date Filed	#	Docket Text
03/23/2017	64	**Supreme Court Case Info** Case number: 16-1140 Filed on: 03/20/2017 Cert Petition Action 1: Pending [10394982] (ASW) [Entered: 04/13/2017 12:14 PM]
06/19/2017	65	**Supreme Court Case Info** Case number: 16-1140 Filed on: 03/20/2017 Cert Petition Action 1: Pending Notes: Notified SC all 9th and DC docs available electronically [10478764] (SOS) [Entered: 06/19/2017 11:53 AM]
11/14/2017	66	**Supreme Court Case Info** Case number: 16-1140 Filed on: 03/20/2017 Cert Petition Action 1: Granted, 11/13/2017 Notes: Notified SC all 9th and DC docs available electronically [10653366] (RR) [Entered: 11/14/2017 12:59 PM]

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES d/b/a NIFLA, a Virginia corporation, et al., Plaintiffs, **v.**	Case No. 3:15-cv-02277-JAH-DHB **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

KAMALA HARRIS, in her official capacity as Attorney General for the State of California, et al., Defendants.	Date: January 11, 2016 Time: 2:30 p.m. Dept.: 13B Judge: John A. Houston Trial Date: None Case Filed: October 13, 2015

* * * *

protection under the United States Constitution and under the laws of South Dakota").

Casey and its progeny hold that a state "can use its regulatory authority to require a physician to provide truthful, non-misleading information relevant to a patient's decision to have an abortion, even if that information might also encourage the patient to choose childbirth over abortion." *Rounds*, 530 F.3d at 734-35, citing *Casey* and *Gonzales v. Carhart*, 550 US 124, 157 (2007) (in the context of abortions, the "government may use its voice and its regulatory authority to show its profound respect for the life within the woman"). It would be incongruous with *Casey* to hold that the requirements of the Act here, which simply require an informational disclosure of available public services and the listing of a phone number, are not subject to regulation, while government may, as in *Casey*, require medical speech despite a physician's preference to remain silent. *See Pickup*, 740 F.3d at 1228 *(Casey*-like professional speech falls at mid-point of speech-conduct continuum and is entitled to "somewhat diminished" protection).

d. The notice requirement survives review under any level of scrutiny.

As indicated above, this Court should subject the notice requirement for licensed facilities to rational basis review only. Nevertheless, as explained below, even if the Court were to apply some form of heightened scrutiny[4], the requirement would survive constitutional review.

With respect to the governmental interests at stake, AB 775 explains that the Legislature enacted it "to ensure that California residents make their personal reproductive health care decisions knowing their rights and the health care services available to them." *See* Assem. Bill No. 775, § 2. Even when viewed in isolation, ensuring that pregnant women are fully advised of the range of health care options available to them in California is not only a legitimate state interest, but a compelling one. *See Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 767 (1994) ("[T]he State has a strong interest in protecting a woman's freedom to seek lawful medical

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[4] To be clear, the State Defendants' position is that strict scrutiny does not apply, despite Plaintiffs' claim to the contrary. The notice requirement for licensed facilities hardly regulates those facilities' speech in the broader public debate that exists separate from individual patient-provider relationships. Rather, the notice operates within the context of those relationships. It is to be disseminated "to clients on site" – either through "distribut[ion] to all clients" in print or digital form, or through the posting of a sign in the waiting area for those "seeking services from the facility." § 123472(a)(1)-(2). Thus, the requirement falls nowhere near that point on the continuum where "First Amendment protection is at its greatest." *Pickup*, 740 F.3d at 1227.

or counseling services in connection with her pregnancy."); *Am. Life League, Inc. v. Reno*, 47 F.3d 642, 656 (4th Cir. 1995) ("sufficiently compelling governmental interests" exist where law "protects public health by promoting unobstructed access to reproductive health facilities"); *see also Goldfarb v. Virginia State Bar*, 421 U.S. 773, 792 (1975) ("States have a compelling interest in the practice of professions within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have broad power to establish standards for licensing practitioners and regulating the practice of professions").

The interest is even more compelling when viewed in light of the history of so-called "crisis pregnancy centers" in California and across the country, as documented in AB 775's legislative history:

> The author contends that, unfortunately, there are nearly 200 licensed and unlicensed clinics known as crisis pregnancy centers (CPCs) in California whose goal is to interfere with women's ability to be fully informed and exercise their reproductive rights, and that CPCs pose as full-service women's health clinics, but aim to discourage and prevent women from seeking abortions. The author concludes that these intentionally deceptive advertising and counseling practices often confuse, misinform, and even intimidate women from

> making fully informed, time-sensitive decisions about critical health care.

Assem. Com. on Health, Analysis of Assembly Bill No. 775 (2015-2016 Reg. Sess.) April 14, 2015, at 3.[5]

The record also shows the licensed facilities notice requirement is appropriately tailored to advance the interest of ensuring that pregnant women are informed about their health care options. Indeed, the requirement is narrowly tailored. As the Legislature recognized, pregnancy decisions are time sensitive and care early in pregnancy is critical. Thus, women need to be notified of available resources as soon as possible. *See* Assem. Bill No. 775, § 1(a)-(d). The time-sensitive nature of pregnancy makes other policy options – such as a statewide advertising campaign, for example – unavailable to the Legislature. As the author of AB 775 stated, the most effective way to make sure that pregnant women obtain the information and services they need during pregnancy in a timely way is to require a licensed health care facility to provide the required notice, especially if the facility does not provide the full spectrum of health care services.

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[5] This and related legislative history are attached to the declaration of the undersigned filed in support of this opposition. Under Rule 201 of the Federal Rules of Evidence, the Court may take judicial notice of the legislative history of state statutes. *Anderson v. Holder*, 673 F.3d 1089, 1094, n.1 (9th Cir. 2012); *Louis v. McCormick & Schmick Restaurant Corp.*, 460 F. Supp. 2d 1153, 1155, n.4 (C.D. Cal. 2006). The State Defendants respectfully request that this Court take judicial notice of the relevant legislative history here.

The notice requirement is also narrowly tailored to the stated interest of ensuring that pregnant women are aware of the full spectrum of pregnancy-related health care services in California because the specific language of the notice speaks to that entire spectrum. In other words, the notice does not simply mention "abortion." Rather, the notice inclusively refers to "comprehensive *family planning services* (including all FDA-approved methods of *contraception), prenatal care,* and *abortion* for eligible women." § 123472(a)(1). To put it another way, the notice does not express a particular opinion or view, or make a specific recommendation. It simply conveys the objective range of information – no more,

* * * *

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES d/b/a NIFLA, a Virginia corporation, et al., Plaintiffs, **v.**	Case No. 3:15-cv-02277-JAH-DHB **DECLARATION OF ANTHONY R. HAKL IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

KAMALA HARRIS, in her official capacity as Attorney General for the State of California, et al., Defendants.	Date: January 11, 2016 Time: 2:30 p.m. Dept.: 13B Judge: John A. Houston Trial Date: None Case Filed: October 13, 2015

DECLARATION OF ANTHONY R. HAKL

I, Anthony R. Hakl, declare:

1. I am a Deputy Attorney General for the Office of the Attorney General in the California Department of Justice located in Sacramento, California. I am the attorney of record for the State Defendants. I make this declaration in support of their opposition to plaintiffs' motion for preliminary injunction. I have personal knowledge of the facts stated in this declaration, and if called as a witness, I could and would competently testify to them.

2. Attached as Exhibit A is a true and correct copy of Assem. Com. on Health, Analysis of Assembly Bill No. 775 (2015-2016 Reg. Sess.) April 14, 2015.

3. Attached as Exhibit B is a true and correct copy of Assem. Com. on Judiciary, Analysis of Assembly Bill No. 775 (2015-2016 Reg. Sess.) April 28, 2015.

4. Attached as Exhibit C is a true and correct copy of Assem. Com. on Health, Analysis of

Assembly Bill No. 775 (2015-2016 Reg. Sess.) May 4, 2015.

5. I retrieved these legislative history documents from the publicly-accessible web site http://leginfo.legislature.ca.gov/.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct of my own personal knowledge, and that this declaration is executed in Sacramento, California, this 13th day of November, 2015.

Dated: November 13, 2015

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney General

/s/ Anthony R. Hakl
ANTHONY R. HAKL
Deputy Attorney General
Attorneys for Defendants Attorney General Kamala D. Harris and Governor Edmud G. Brown, Jr.

* * * *

EXHIBIT A

Date of Hearing: April 14, 2015

ASSEMBLY COMMITTEE ON HEALTH
Rob Bonta, Chair
AB 775 (Chiu) – As Amended April 8, 2015

SUBJECT: Reproductive FACT Act.

SUMMARY: Requires licensed clinics that provide family planning or pregnancy-related services to provide a notice to consumers regarding their reproductive rights. Requires unlicensed facilities that provide pregnancy-related services to disseminate and post a notice informing consumers that they are not a licensed medical facility. Specifically, **this bill:**

1) Enacts the Reproductive Freedom, Accountability, Comprehensive Care, and Transparency Act (FACT Act).

2) Defines, for purposes of the FACT Act, a licensed covered facility as a licensed, or intermittent, clinic whose primary purpose is providing family planning or pregnancy-related services, and that satisfies two or more of the following:

    a) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women;

b) The facility provides, or offers counseling about contraception, or contraceptive methods;

c) The facility offers pregnancy testing or pregnancy diagnosis;

d) The facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling; and,

e) The facility has staff or volunteers who collect health information from clients.

3) Clarifies that the following types of clinics are not considered covered facilities for the purposes of this bill:

a) A clinic directly conducted, maintained, or operated by the United States or any of its departments, officers, or agencies; and,

b) A licensed primary care clinic that is enrolled as a Medi-Cal provider and a provider in the Family Planning, Access, Care, and Treatment Program.

4) Defines, for purposes of the FACT Act, an unlicensed covered facility as a facility that is not licensed by the State of California and does not have a licensed medical provider on staff whose primary purpose is providing pregnancy-related services and that satisfies two or more of the following:

a) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women;

b) The facility offers pregnancy testing or pregnancy diagnosis;

c) The facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling; and,

d) The facility has staff or volunteers who collect health information from clients.

5) Requires licensed covered facilities to disseminate the following notice in English and in minority languages pursuant to the federal Voting Rights Act, that states the following:

> "California has public programs that provide immediate free or low-cost access to comprehensive family planning services (including all FDA-approved methods of contraception), prenatal care, and abortion, for eligible women. To determine whether you qualify, contact the county social services office at [insert the telephone number]."

6) Requires the notice to be posted in a conspicuous place in the licensed clinic, specifies the size of the type on the notice, and requires a printed copy be given directly to the client, either in written or digital form. Allows

the notice to be combined with other mandated disclosures.

7) Requires an unlicensed facility to disseminate a notice to clients in English and in minority languages pursuant to the federal Voting Rights Act that states the following:

> "This facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services."

8) Specifies the size of the notice, the size type the notice is printed in, and that the notice is to be posted conspicuously in the entrance to the unlicensed facility and in at least one other area where clients wait to receive services. Requires that the notice shall be given to clients onsite, and included in any print and digital advertising materials.

9) Establishes civil penalties for failure to comply with these provisions, enforceable by the Attorney General (AG), a city attorney, or county counsel if they have provided the facility with reasonable notice of noncompliance and verified that the violation was not corrected within 30 days from the date of the notice.

10) Specifies that any civil penalties be deposited into the General Fund if an action is brought by the AG, paid to the treasurer of the city if

an action is brought by a city attorney, and paid to the county treasurer if an action is brought by a county counsel.

11) Requires the AG to post and maintain of the Department of Justice's (DOJ) Internet Web site a list of the covered facilities upon which a penalty has been imposed.

12) Provides that if any provisions of this bill or its application is held invalid, that invalidity will not affect other provisions or applications that can be given effect without the invalid provision or application.

13) Makes various findings and declarations regarding Californian residents' rights to privacy and access to reproductive health services.

EXISTING LAW:

1) Licenses and regulates clinics, including primary care clinics and specialty clinics such as surgical clinics, by the Department of Public Health (DPH).

2) Provides for exemptions from licensing requirements for certain types of clinics, including federally operated clinics, local government primary care clinics, clinics affiliated with an institution of higher learning, clinics conducted as outpatient departments of hospitals, and community or free clinics. Also provides for exemptions for community or free clinics that are operated on

separate premises from the licensed clinic and are only open for limited services of no more than 20 hours a week (also known as intermittent clinics).

3) Authorizes DPH to take various types of enforcement actions against a primary care clinic that has violated state law or regulation, including imposing fines, sanctions, civil or criminal penalties, and suspension or revocation of the clinic's license.

4) Grants a specific right of privacy under the California Constitution and provides that the right to have an abortion may not be infringed upon without a compelling state interest.

5) Requires, under the federal Voting Rights Act, voting materials be translated in localities where there are more than 10,000 or over 5% of the total voting age citizens in a single political subdivision (usually a county, but a township or municipality in some states) who are members of a single minority language group, have depressed literacy rates, and do not speak English very well. The Census Bureau identifies specific language groups for specific jurisdictions.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

1) **PURPOSE OF THE BILL.** According to the author, California has a proud legacy of

respecting reproductive freedom and funding forward thinking programs to provide reproductive health assistance to low income women. The author notes that according to the Department of Health Care Services, the Patient Protection and Affordable Care Act expansion has made millions of Californians, 53% of them women, newly eligible for Medical. The author states because pregnancy decisions are time sensitive, California women should receive information about their rights and available services at the sites where they obtain care.

The author contends that, unfortunately, there are nearly 200 licensed and unlicensed clinics known as crisis pregnancy centers (CPCs) in California whose goal is to interfere with women's ability to be fully informed and exercise their reproductive rights, and that CPCs pose as full-service women's health clinics, but aim to discourage and prevent women from seeking abortions. The author concludes that these intentionally deceptive advertising and counseling practices often confuse, misinform, and even intimidate women from making fully-informed, time-sensitive decisions about critical health care.

2) **BACKGROUND.**

a) **Crisis Pregnancy Centers.** CPCs are facilities, both licensed and unlicensed, which present themselves as comprehensive reproductive health

centers, but are commonly affiliated with, or run by organizations whose stated goal is to prevent women from accessing abortions. A 2015 NARAL Pro-Choice America report on CPCs notes that the National Institute of Family and Life Advocates (an organization with over 1,300 CPC affiliates) states on its website that it is on the front line of the cultural battle over abortion, and its vision is to provide [CPCs] with legal resources and counsel, with the aim of developing a network of life-affirming ministries in every community across the nation in order to achieve an abortion-free America. The NARAL report also sent several researchers into CPCs to receive the counseling offered, and they widely reported that they were provided with inaccurate information, including only being given information regarding the risks of abortion, being told that many women commit suicide after having an abortion, and being told abortions can cause breast cancer.

b) **University of California, Hastings College of Law research report.** In fall of 2009 the Assembly Business, Professions and Consumer Protection Committee, concerned that CPCs throughout California were disseminating medically inaccurate information about pregnancy options

available in the state, requested a report by the University of California, Hastings College of Law regarding CPCs' practices and potential legislative options for regulating them Completed in December of 2010, "Pregnancy Resource Centers: Ensuring Access and Accuracy of Information," discusses several options for regulation CPCs, ranging from creating new regulations, leveraging existing regulations aimed specifically at medical services, as well as creating a new statute. Because approaches that have treated CPCs and full-service pregnancy centers differently have been challenged as violating the First Amendment, the report concludes that the best approach to a statutory change would regulate all pregnancy centers, not just CPCs, in a uniform manner, which is the approach that this bill adopts.

c) **Legal challenges to CPC regulation.** In November 2014, the Supreme Court rejected an appeal from several CPCs over a 2011 New York City law that requires CPCs to inform clients whether or not they have medical personnel on site. New York City officials argued that the law is meant to protect consumers from false advertising.

In February of this year, a federal judge upheld the City of San Francisco's regulation of CPCs, which prohibits clinics from engaging in false or misleading advertising. The law allows a judge to order clinics to post notices saying whether they offer abortions or abortion referrals. The ordinance was challenged by First Resort, a nonprofit clinic owner, as a violation of free speech. First Resort's print and online advertisements stated that the clinic offers "abortion information, resources and compassionate support for women facing the crucial decisions that surround unintended pregnancies and are considering abortion." In First Resort, Inc., v. Board of Supervisors of the City and County of San Francisco, the judges' ruling said the San Francisco law "only restricts false and misleading commercial speech, which is not protected by the First Amendment."

3) **SUPPORT.** Black Women for Wellness and NARAL Pro-Choice, California the co-sponsors of this bill as well as numerous other organizations, including, California Council of Churches IMPACT, California Latinas for Reproductive Justice, Maternal and Child Health Access, and Planned Parenthood, California, support this bill because it requires unlicensed facilities that provide pregnancy-related care to inform clients that they are not a licensed medical facility and do

not have a licensed provider on staff, enabling women to seek the care they wish to obtain and providing context for counseling given at these unlicensed facilities. They also state that distributing a notice of reproductive health services would ensure that women in any reproductive health or pregnancy counseling facility know that California respects their rights and provides assistance.

The California Primary Care Association (CPCA) states this bill will protect patients by allowing them to fully understand their rights when it comes to their reproductive freedom and to not be deceived by organizations whose sole purpose is to provide them with a biased view that does not allow them to make their own informed choice. CPCA notes that many of their community clinics and health centers grew out of the women's movement and their members believe a women's right to choose is a fundamental health right that must be protected.

The American Nurses Association, California (ANA\C) writes that all California residents should have access to reproductive health services, and more than 700,000 California women become pregnant every year, approximately half of them unintentionally. ANA\C states thousands of women do not know the legal options they have, or the funding resources available to them, and this bill will help ensure that pregnant women

receive the information they need to make an informed decision.

Forward Together supports this bill, opining; women in California face a threat from manipulative crisis pregnancy centers which pose as comprehensive reproductive health centers, but are, in fact, anti-choice organizations that target women with the goal of blocking them from considering abortion as an option and using proven contraceptive methods. Forward Together contends that CPCs use false and misleading advertising to appeal to women, who think they may be pregnant and are looking for comprehensive reproductive health care, and then manipulate and shame these women by peddling medically inaccurate information about abortion and contraception.

4) **OPPOSITION.** The California Catholic Conference (CCC) opposes this bill stating, on its surface, the bill proposes to regulate the state's pregnancy centers, but in actuality is aimed at discriminating against those pregnancy centers that hold a pro-life viewpoint. CCC contents that such unfair legislation may discourage women from getting the assistance that they need and deserve as well as expose many of these pregnancy centers to needless criminal or civil sanctions for failure to comply. CCC concludes that because they believe all life is sacred, they support programs which offer medical, economic and emotional support for pregnant

women and children, so that they can make life-affirming choices.

The California Right to Life Committee, Inc. (CRLC) opposes this bill and states that, if enacted, it could set a precedent for many other businesses that are not like or appreciated by one group in society which could bring a law suit against another business, company, or agency. CRLC asks us to consider car dealerships: what if they were to be seen as anti-environmental with misleading advertising, selling too many cars, and making citizens not anxious to take high speed rail? CRLC asks; would it not be possible that the California High Speed Rail Authority require that car dealerships advertise High Speed Rail locations, schedules, and fees? CRLC argues the provisions of this bill would not be best practice for the car industry any more that it would be for pro-life pregnancy centers to have to promote services which they consider morally reprehensible.

5) **DOUBLE REFERRAL.** This bill is double referred; upon passage in this committee, this bill will be referred to the Assembly Judiciary Committee.

6) **SUGGESTED AMENDMENT.** As noted in existing law above, the federal Voting Act applies to political subdivisions (usually a county, but sometimes a township or municipality) and refers to populations that,

"don't speak English very well." Because the covered facilities subject to the provisions of this bill are not likely to be familiar with federal Voting Act requirements, and state law already contains language that provides more specific guidance on which languages health related information should be translated into in each county, the Committee may wish to amend the bill to strike the references to federal law and instead require covered facilities to translate the notices required by this bill into the primary threshold languages for Medi-Cal beneficiaries as determined by the Department of Health Care Services for the county in which the covered facility is located.

7) **POLICY COMMENT.** This bill requires the AG to post and maintain on the DOJ Internet Web site a list of the covered facilities upon which a penalty has been imposed for noncompliance. Because an action against a covered facility may be brought by a city attorney or county counsel, as well as the AG, should this bill pass this committee, the author may wish to consider working with the Judiciary Committee to clarify how the AG will know a covered facility was cited when the action was brought by an agency other than the DOJ.

REGISTERED SUPPORT/OPPOSITION:

SupportBlack Women for Wellness (cosponsor)
NARAL Pro-Choice California (cosponsor)

Act for Women and Girls
American Congress of Obstetricians and Gynecologists
California Association for Nurse Practitioners
California Council of Churches IMPACT
California Latinas for Reproductive Justice
California Primary Care Association
California Women's Law Center
California Women Lawyers
Forward Together
League of Women Voters of California
Maternal And Child Health Access
National Abortion Federation
Planned Parenthood Affiliates of California
Religious Coalition for Reproductive Choice, California
Western Methodist Justice Movement
Women's Community Clinic
Women's Health Specialists

Opposition
Sacramento Life Center
The California Catholic Conference
The California Right to Life Committee, Inc.

Analysis Prepared by: Lara Flynn /HEALTH/ (916) 319-2097

EXHIBIT B

Date of Hearing: April 28, 2015

ASSEMBLY COMMITTEE ON JUDICIARY
Mark Stone, Chair
AB 775 (Chiu) – As Amended April 16, 2015

SUBJECT: REPRODUCTIVE FACT ACT

KEY ISSUES:

1) SHOULD LICENSED PRIMARY CARE CLINICS THAT PROVIDE FAMILY PLANNING OR PREGNANCY-RELATED SERVICES BE REQUIRED TO PROVIDE A SPECIFIED NOTICE INFORMING CONSUMERS ABOUT THE EXISTENCE OF A CONTINUUM OF FREE OR LOW-COST HEALTH CARE SERVICES?

2) SHOULD AN UNLICENSED FACILITY THAT PROVIDES PREGNANCY-RELATED SERVICES BE REQUIRED TO PROVIDE A SPECIFIED NOTICE INFORMING CONSUMERS THAT IT IS NOT A LICENSED MEDICAL FACILITY?

SYNOPSIS

This bill, co-sponsored by NARAL Pro-Choice America and Black Women for Wellness, seeks to that ensure that women who are pregnant are fully notified about the continuum of health care services available in the state. With respect to licensed health care facilities, the bill requires each client at the time

of her visit to be advised of the various publicly funded family planning and pregnancy-related resources available in California, and how to directly access these resources. Proponents of the bill contend that this notice is needed to ensure that women in California are fully informed of their options and are able to make their own healthcare and pregnancy-related decisions. Opponents of the bill, representing operators of pregnancy clinics impacted by this bill and other concerned citizens holding pro-life views, strongly object to this requirement and assert that it unfairly targets pro-life pregnancy clinics because of their anti-abortion viewpoint, forcing them to disseminate a message with which they do not agree, in violation of free speech protections. The Committee's analysis of the free speech issues indicates that the licensed facility notice is content-based and would likely be considered viewpoint-neutral commercial speech. As such, it would be subject to intermediate scrutiny. Furthermore, even if the licensed facility notice were subjected to strict scrutiny, it would likely be found to be constitutional if the court agreed with the proponents' argument that the most effective way to ensure that women timely obtain the information and services they need during pregnancy is to require licensed health facilities to provide the notice.

With respect to unlicensed facilities, the bill simply requires each client to be advised at the time of her visit that the facility is not licensed as a medical facility. Proponents of the bill contend that this notice is needed to ensure that pregnant women in California know when they are (and are not) getting medical care from licensed professionals. Opponents

generally do not allege this notice violates free speech protections, but some contend that this provision requires unlicensed clinics to post language that is untrue. They contend that many of the non-licensed clinics do have licensed medical staff on site as the clinics seek to become licensed. The Committee's analysis of the unlicensed facility notice concludes that it is content-based and would most likely be considered viewpoint-neutral commercial speech. As such, the required notice would be subject to rational basis scrutiny and would likely be found permissible under that standard. Even if the notice were to be subject to strict scrutiny, it would likely withstand strict scrutiny, especially in light of two recent court decisions from other states which have upheld, after applying strict scrutiny, requirements for unlicensed facilities to provide similar notices.

Finally, the bill authorizes modest civil penalties to be imposed if, after having been given notice of non-compliance and 30 days in which to correct a violation, the facility still fails to comply with these provisions. This bill previously passed the Health Committee by a 12-5 vote, and will be referred to Appropriations should it be approved in this Committee.

SUMMARY: Requires licensed facilities and unlicensed facilities whose purpose is to provide pregnancy-related services to provide specified notices to clients. Specifically, **this bill:**

1) Defines a licensed covered facility to mean a licensed, or intermittent, clinic whose primary purpose is providing family planning or

pregnancy-related services, and that satisfies two or more of the following:

a) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women;

b) The facility provides, or offers counseling about contraception, or contraceptive methods;

c) The facility offers pregnancy testing or pregnancy diagnosis;

d) The facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling; and,

e) The facility has staff or volunteers who collect health information from clients.

2) Clarifies that the following types of clinics are not considered covered facilities for the purposes of this bill:

a) A clinic directly conducted, maintained, or operated by the United States or any of its departments, officers, or agencies; and,

b) A licensed primary care clinic that is enrolled as a Medi-Cal provider and a provider in the Family Planning, Access, Care, and Treatment Program.

3) Defines an unlicensed covered facility to mean a facility that is not licensed by the State of

California and does not have a licensed medical provider on staff, whose primary purpose is providing pregnancy-related services and that satisfies two or more of the following:

a) The facility offers obstetric ultrasounds, obstetric sonograms, or prenatal care to pregnant women;

b) The facility offers pregnancy testing or pregnancy diagnosis;

c) The facility advertises or solicits patrons with offers to provide prenatal sonography, pregnancy tests, or pregnancy options counseling; and,

d) The facility has staff or volunteers who collect health information from clients.

4) Requires licensed covered facilities to disseminate the following notice in English and in minority languages pursuant to the federal Voting Rights Act, that states the following:

> "California has public programs that provide immediate free or low-cost access to comprehensive family planning services (including all FDA-approved methods of contraception), prenatal care, and abortion, for eligible women. To determine whether you qualify, contact the county social services office at [insert the telephone number]."

5) Requires the notice to be posted in a conspicuous place in the licensed clinic, specifies the size of the type on the notice, and requires a printed copy be given directly to the client, either in written or digital form. Allows the notice to be combined with other mandated disclosures.

6) Requires an unlicensed facility to disseminate a notice to clients in English and in minority languages pursuant to the federal Voting Rights Act that states the following:

> "This facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services."

7) Specifies the size of the notice, the size type the notice is printed in, and that the notice is to be posted conspicuously in the entrance to the unlicensed facility and in at least one other area where clients wait to receive services. Requires that the notice shall be given to clients onsite, and included in any print and digital advertising materials.

8) Establishes civil penalties for failure to comply with these provisions, enforceable by the Attorney General (AG), a city attorney, or county counsel if they have provided the facility with reasonable notice of noncompliance and verified that the violation

was not corrected within 30 days from the date of the notice.

9) Specifies that any civil penalties be deposited into the General Fund if an action is brought by the AG, paid to the treasurer of the city if an action is brought by a city attorney, and paid to the county treasurer if an action is brought by a county counsel.

10) Requires the AG to post and maintain on the Department of Justice's (DOJ) Internet Web site a list of the covered facilities upon which a penalty has been imposed.

11) Provides that if any provisions of this bill or its application is held invalid, that invalidity will not affect other provisions or applications that can be given effect without the invalid provision or application.

12) Makes various findings and declarations, including, among other things:

    a) Because pregnancy decisions are time sensitive, and care early in pregnancy is important, California must supplement its own efforts to advise women of its reproductive health programs.

    b) The most effective way to ensure that women quickly obtain the information and services they need to make and implement timely reproductive decisions is to ensure licensed health care facilities that are unable to

immediately enroll patients into the Family PACT and Medi-Cal programs advise each patient at the time of her visit the various publicly funded family planning and pregnancy-related resources available in California and the manner in which to directly and efficiently access those resources.

c) The purpose of the Act is to ensure that California residents make their personal reproductive health care decisions by knowing their rights and health care services available to them.

EXISTING LAW:

1) Licenses and regulates clinics, including primary care clinics and specialty clinics such as surgical clinics, by the Department of Public Health (DPH). (Health and Safety Code Section 1200 *et seq.*)

2) Provides for exemptions from licensing requirements for certain types of clinics, including federally operated clinics, local government primary care clinics, clinics affiliated with an institution of higher learning, clinics conducted as outpatient departments of hospitals, and community or free clinics. (Health and Safety Code Section 1206.)

3) Prohibits any government body from making any law respecting an establishment of religion, or prohibiting the free exercise

thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances. (U.S. Constitution, Amendment I, made applicable to the states by Amendment XIV.)

4) Provides that every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right, and that no law shall restrain or abridge liberty of speech or press. (Cal. Const., Art. I, Section 2.)

5) Holds that the government is "free to prevent the dissemination to commercial speech that is false, deceptive, or misleading" without violating the First Amendment. (*Zauderer v. Office of Disciplinary Counsel of the Supreme Ct.* (1985) 471 U.S. 638.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: This bill, co-sponsored by NARAL Pro-Choice America and Black Women for Wellness, seeks to ensure that women who are pregnant are fully notified about the continuum of health care services available in the state. With respect to licensed health care facilities, the bill requires each client at the time of her visit to be advised of the various publicly funded family planning and pregnancy-related resources available in California, and how to directly access these resources. With respect to unlicensed facilities, the bill simply

requires each client to be advised at the time of her visit that the facility is not licensed to provide medical care. The bill authorizes modest civil penalties to be imposed if, after having been given notice of noncompliance and 30 days in which to correct a violation, the facility still fails to comply with these provisions.

Author's Statement. According to the author:

> California has a proud legacy of respecting reproductive freedom and funding forward-thinking programs to provide reproductive health assistance to low income women. The power of the law is only fully realized when California's women are fully informed of the rights and services available to them. Because family planning and pregnancy decisions are time sensitive, California women should receive information about their rights and available services at the sites where they obtain care.
>
> Millions of California women are in need of publicly funded family planning services, contraception services and education, abortion services, and prenatal care and delivery. More than 700,000 California women become pregnant every year and one-half of these pregnancies are unintended. Yet, at the moment they learn they are pregnant, thousands of women remain unaware of the public programs available to them, including contraception, health education and counseling, family planning, prenatal care, abortion or delivery.

It is in the best interest of the state, patients and providers that women are aware of available assistance to them – whether it is for preventing, continuing, or terminating a pregnancy. AB 775 ensures that women in California are fully informed of their options and are able to make their own healthcare and pregnancy-related decisions.

Background on Community Clinics. Community clinics and health centers are nonprofit, tax-exempt clinics that are licensed as community or free clinics, and provide services to patients on a sliding fee scale basis or, in the case of free clinics, at no charge to the patients. These include federally designated community health centers, migrant health centers, rural health centers, and frontier health centers. California is home to nearly 1,000 community clinics serving more than 5.6 million patients (or one in seven Californians) annually through over 17 million patient encounters. More than 50% of these patients are Hispanic and 43% speak a primary language other than English.

The non-statutory term "crisis pregnancy center" (CPC) refers to a subset of facilities that offer pregnancy-related services and are commonly affiliated with or operated by organizations whose stated goal is to prevent women from accessing abortions. Depending on factors like the personnel who are employed and the types of clinical or medical services offered, a CPC may operate as a licensed facility or, if exempted under Health and Safety Code Section 1206, an unlicensed facility. For the purpose of analyzing the free speech issues

raised by this bill, however, the only distinction that matters is whether a facility is considered a licensed covered facility or an unlicensed covered facility because the bill regulates all members within each category equally and each category contains both CPCs and non-CPCs.

I. FIRST AMENDMENT DOCTRINE: COMPELLED SPEECH. It is well-established that the First Amendment generally prohibits the government from compelling speech. "[T]he right of freedom of thought protected by the First Amendment ... includes both the right to speak freely and the right to refrain from speaking at all." (*Wooley v. Maynard*, 430 U.S. 705, 714; *see R.J. Reynolds Tobacco Co. v. Shewry* (9th Cir. 2005) 423 F.3d 906, 915.) However, the First Amendment's protections—including the right to not be compelled to speak—are not absolute. (*See Schenck v. United States* (1919) 249 U.S. 47, 52, "The most stringent protection of free speech would not protect a man [from] falsely shouting fire in a theatre and causing panic.")

In a compelled speech analysis, a court will uphold a law that compels speech if the law is tailored and the government's reasoning behind the law survives the applicable level of scrutiny. A court applies different levels of scrutiny depending on how the speech is classified. The higher the scrutiny, the more tailored the law must be, and the more compelling the government's interest must be. (*See Riley v. National Federation of the Blind of North Carolina* (1988) 487 U.S. 781, 796, "Our lodestars in deciding what level of scrutiny to apply to a compelled statement must

be the nature of the speech taken as a whole and the effect of the compelled statement thereon.")

A. Content-Based or Content-Neutral. The first classification of any regulation of speech is whether the regulation is "content-based" or "content-neutral." However, the Supreme Court has stated that "[m]andating speech that a speaker would not otherwise make necessarily alters the content of the speech." (*Riley v. National Federation of the Blind of North Carolina, Inc.* (1988) 487 U.S. 781, 795.) Accordingly, any compelled speech is viewed as a content-based regulation (i.e. a law proscribing certain content). (*Ibid.*)

Subject-Matter Discrimination vs. Viewpoint Discrimination. If the speech is a "content-based" regulation, a court will distinguish whether the law is "subject-matter discrimination" or "viewpoint discrimination." For example, a regulation prohibiting discussion of abortion in general would be "subject-matter discrimination," whereas a regulation prohibiting someone from speaking out against abortion would be "viewpoint discrimination." While both forms of discrimination are content-based, the courts have held that "viewpoint discrimination" is an especially suspect and "egregious form of content discrimination [and] ... the government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction." (*Rosenberger v. Rector and Visitors of the Univ. of Va.* (1995) 515 U.S. 819, 829.)

B. Commercial Speech (including Professional Speech) or Noncommercial Speech. The second level of analysis for a speech regulation is whether the speech being regulated is commercial or noncommercial speech. If the regulation is content-based and the speech is noncommercial, a court will likely apply the strict scrutiny. Conversely, a similar regulation that is content-based but where the speech is commercial, a court will apply a more lenient standard. (*See Dex Media West, Inc. v. City of Seattle* (9th Cir. 2012) 696 F.3d 952, 956-957.) Indeed, regulations targeting misleading commercial speech need only survive rational basis scrutiny. (*See Zauderer v. Office of Disciplinary Counsel of the Supreme Ct.* (1985) 471 U.S. 626.)

Sometimes, the line between commercial speech and noncommercial speech is not clear. For example, in *Bolger v. Youngs Drug Products Corp.*, the Court struck down a federal law that prohibited unsolicited advertisements on contraception. There, a manufacturer and distributor of contraceptives-who challenged the law-distributed pamphlets which advertised its contraceptives and discussed in its pamphlets issues like venereal disease and family planning. Although the Court ultimately struck down the law, the Court held that the pamphlet was commercial speech. (*Bolger v. Youngs Drug Prods. Corp.* (1983) 463 U.S. 60, 75.)

Courts have established a test to help identify whether speech is more like commercial or noncommercial speech. In a close case where the regulation involves both commercial and noncommercial speech, a reviewing court looks at (i)

the advertising format of the speech, (ii) the speech's reference to a specific product, and (iii) the underlying economic motive of the speaker (collectively known as the "*Bolger*" factors). (*Ass'n of Nat. Advertisers, Inc. v. Lungren* (9th Cir. 1994) 44 F.3d 726, 728.)

(1) Commercial Speech. It is well-settled law that the government is "free to prevent the dissemination to commercial speech that is false, deceptive, or misleading" without violating the First Amendment. (*Zauderer v. Office of Disciplinary Counsel of the Supreme Ct.* (1985) 471 U.S. 638.) Specifically, "disclosure requirements trench much more narrowly on an advertiser's interests [because] warnings or disclaimers might be appropriately required in order to dissipate the possibility of consumer confusion or deception." (*Id.* at 651 [internal quotations omitted]). Accordingly, misleading commercial speech only needs to survive rational basis scrutiny. (*Ibid.*)

Indeed, "laws requiring a commercial speaker to make purely factual disclosures relating to its business affairs, whether to prevent deception or simply to promote informational transparency, have a purpose consistent with the reasons for according constitutional protection to commercial speech." (*Beeman v. Anthem Prescription Management, LLC* (2013) 58 Cal.4th 329, 356 [citations omitted].) Similarly, "[m]andated disclosure of accurate, factual, commercial information does not offend the core First Amendment values of promoting efficient exchange of information or protecting individual liberty interests. Such disclosure furthers, rather

than hinders, the First Amendment goal of the discovery of truth and contributes to the efficiency of the 'marketplace of ideas.'" (*National Electric Manufacturers Assn. v. Sorrell* (2d Cir. 2001) 272 F.3d 104, 113-114.)

(2) Professional Speech. Courts have established a doctrine, like the commercial speech doctrine, that applies when government regulates professional speech. Justice Jackson provided the following explanation for why a professional speech doctrine exists:

> The modern state owes and attempts to perform a duty to protect the public from those who seek for one purpose or another to obtain its money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or the irresponsible, or against unauthorized representation of agency. A usual method of performing this function is through a licensing system.... Very many are the interests which the state may protect against the practice of an occupation, very few are those it may assume to protect against the practice of propagandizing by speech or press. (*Thomas v. Collins* (1945) 323 U.S. 516, 545 (Jackson, J., concurring).)

In other words, a state or federal government may regulate professional speech because "[i]t is the State's imprimatur (and the regulatory oversight that accompanies it) that provide clients with the confidence ... to put their health or their livelihood in

the hands of those [professionals] who utilize knowledge and methods with which the clients ordinarily have little or no familiarity. (*King v. Governor of the State of New Jersey* (3d Cir. 2014) 767 F.3d 216, 232.)

Professional speech, similar to commercial speech, is subject to lower level of scrutiny. The Ninth Circuit Court of Appeals, in *Pickup v. Brown*, explains this principle:

> The First Amendment tolerates a substantial amount of speech regulation within the professional-client relationship that it would not tolerate outside of it. And that toleration makes sense: When professionals, by means of their state-issued licenses, form relationships with clients, the purpose of those relationships is to advance the welfare of the clients, rather than to contribute to public debate. (*Pickup v. Brown* (9th Cir. 2014) 740 F.3d 1208, 1228.)

To determine whether speech is professional speech, the inquiry is whether the "speaker takes the affairs of a client personally in hand and purports to exercise judgment on behalf of the client in the light of the client's individual needs and circumstances." (*Moore-King v. County of Chesterfield, Va.* (4th Cir. 2013) 708 F.3d 560, 569 [citations omitted].)

II. APPLYING FREE SPEECH ANALYSIS TO THE REQUIRED NOTICE FOR LICENSED HEALTH CARE FACILITIES. This bill requires a licensed covered facility, as defined, to disseminate

to all clients on site the following notice ("licensed facility notice"):

> "California has public programs that provide immediate free or low-cost access to comprehensive family planning services (including all FDA-approved methods of contraception), prenatal care, and abortion for eligible women. To determine whether you qualify, contact the county social services office at [insert the telephone number]."

Proponents of the bill contend that this notice is needed to ensure that women in California are fully informed of their options and are able to make their own healthcare and pregnancy-related decisions. Opponents of the bill, however, strongly object to this requirement and assert that it unfairly targets operators of CPCs because of their anti-abortion viewpoint, forcing them to disseminate a message with which they do not agree, in violation of free speech protections.

As detailed below, the Committee's analysis of the free speech issues indicates that the licensed facility notice is content-based, and would likely be considered viewpoint-neutral commercial speech that would be subject to intermediate scrutiny. Even if the notice were subjected to strict scrutiny, the notice may very well be held constitutional if a court accepted proponents' argument that the most effective way to ensure that women timely obtain the information about services they need during pregnancy is to require licensed health facilities to provide the notice on site.

A. The Licensed Facility Notice will Likely be Construed as a Content-Based Regulation. Because the licensed facility notice relates to pregnancy-related services, the speech regulated will likely be considered content-based, and not content-neutral. Moreover, any compelled speech regulation is generally analyzed as a content-based restriction. (*See Riley, supra*, at p. 795.) Accordingly, the level of scrutiny a court would apply depends on whether the notice triggers viewpoint discrimination, or is commercial speech.

B. The Licensed Facility Notice Does Not Create Viewpoint Discrimination, and is Viewpoint Neutral. Viewpoint discrimination occurs when the government not only targets a certain subject matter, but also targets a particular point of view on that specific subject matter. (*See Rosenberger, supra*, at p. 829.) Here, the government's compelling interest is consistent with the licensed facility notice, which does not convey a particular viewpoint about the services it mentions. The stated purpose of the bill is to ensure that women who are pregnant are fully notified about the full spectrum of health care services available in the state. The notice in this bill is likely to be construed as viewpoint-neutral because the notice speaks to the entire continuum of pregnancy-related health care services, like family planning services, contraception, prenatal care, and abortion. Moreover, the regulation applies to all primary care clinics whose primary purpose is providing family planning or pregnancy-related services, and provides at least two of the following: ultrasounds, contraceptives, pregnancy testing, advertising, or data collection. This means that the

notice requirement will apply to different types of health care facilities represented on the spectrum (as described in the notice).

C. Exemption of Certain Facilities Under this Bill Does Not Create Viewpoint Discrimination. Similar to the disputed exemption in *McCullen*, discussed above, the exemption provided under this bill does not demonstrate viewpoint discrimination. The first exemption is provided to clinics operated by the federal government, which is aimed at addressing preemption concerns. The second exemption is provided to a licensed primary care clinic that is enrolled as a Medi-Cal provider *and* enrolled as a provider in the Family Planning, Access, Care, and Treatment Program (Family PACT).

According to the author, a licensed primary care clinic that is both a Medi-Cal provider and a Family PACT provider offers the full continuum of health care services as described in the Notice above (i.e. comprehensive family planning services, contraception, prenatal care, and abortion). Under Medi-Cal a patient is covered for pregnancy-related services, maternity and new born care, prenatal care, and emergency and abortion services. Under Family PACT, a patient is covered for comprehensive clinical family planning services, including but not limited to methods and services to limit or enhance fertility (including contraceptives); natural family planning; abstinence methods; limited fertility management; preconception counseling; maternal and fetal health counseling; general reproductive health care (including

diagnosis and treatment of infections and conditions, including cancer, that threaten reproductive capability); medical family planning treatment; and family planning procedures.

Thus, the entire spectrum of services, as specified in the notice, will be provided by a Medi-Cal and Family PACT provider. Accordingly, there is appropriate justification for those clinics to be exempted from the requirement to provide the licensed facility notice.

D. The Licensed Facility Notice Will Likely be Construed as Commercial or Professional Speech. As previously stated, the speech being regulated is professional speech if "the speaker takes the affairs of a client personally in hand and purports to exercise judgment on behalf of the client in the light of the client's individual needs and circumstances." (*Moore-King v. County of Chesterfield, Va.* (4th Cir.2013) 708 F.3d 560,569 [citations omitted].)

Under this bill, a licensed facility means a facility licensed under Section 1204, or an intermittent clinic operating under a primary care clinic pursuant to subdivision (h) of Section 1206 of the Health and Safety Code. This class of primary care clinics generally includes a community clinic, a free clinic, a surgical clinic, a chronic dialysis clinic, a rehabilitation clinic, and an alternative birth center (collectively "primary care clinics").

In order to be licensed as a primary care clinic, an applicant must apply to the California Department

of Public Health and comply with a series of licensing requirements to provide care. A clinic must provide "diagnostic, therapeutic, radiological, laboratory and other services for the care and treatment of patients for whom the clinic accepts responsibility." (22 Cal Code Regs. Section 75026.) Moreover, "[e]very medical clinic shall have a licensed physician designated as the professional director" and "[a] physician, physician's assistant, or a registered nurse shall be present whenever medical services are provided." (22 Cal Code Regs. Section 75027.)

Given that a primary care clinic accepts to provide treatment for patients whom the clinic accepts responsibility, and provides medically-supervised care, a notice requirement for primary care clinic is likely to be construed a professional speech. (*See Moore-King, supra*, at p. 569.) Accordingly, a court would likely apply intermediate scrutiny.

E. The Licensed Facility Notice Will Likely Survive Intermediate Scrutiny. Because the licensed family notice will likely be construed as professional speech, a reviewing court will probably subject the notice to intermediate scrutiny. To survive intermediate scrutiny, the law must directly advance a substantial governmental interest. (*See Association of National Advertisers, Inc. v. Lungren* (9th Cir. 1994) 44 F.3d 726, 729.)

Here, the interest is to ensure that women who are pregnant are fully notified about the continuum of health care options available in the state. (Indeed, public health has always been viewed as a

compelling governmental interest.) The government's interest here in ensuring that pregnant women are informed about their health care options is directly advanced by a notice provided by primary care facilities, especially if the facility does not provide the full spectrum of health care services. Thus, the licensed facility notice will survive intermediate scrutiny.

F. Even if a Court were to Apply Strict Scrutiny, the Licensed Facility Notice Will Likely Pass Constitutional Muster. To survive strict scrutiny, the law must be narrowly tailored to satisfy a compelling government interest. As previously stated, the interest is to ensure that women who are pregnant are fully notified about the continuum of health care options available in the state. The interest is compelling and narrowly tailored because the time-sensitive nature of any pregnancy affects the policy options that this Legislature can enact. As this author has stated, the most effective way to ensure that women obtain information and services they need during pregnancy in a timely way is to require a licensed health care facility to provide the notice.

An alternative, like a statewide campaign, would not achieve the compelling interest because it would not sufficiently provide information to the consumer about the services provided available at a particular primary care facility, especially if that facility does not provide the full spectrum of medical options. (*See Evergreen Ass'n, Inc., supra*; at p. 247.) Thus, the licensed facility notice will likely pass constitutional

muster, whether a court reviews the law under intermediate or strict scrutiny.

III. APPLYING FREE SPEECH ANALYSIS TO THE REQUIRED NOTICE FOR UNLICENSED FACILITIES. The bill requires an unlicensed covered facility, as defined, to disseminate to clients on site the following notice ("unlicensed facility notice"):

> "This facility is not licensed as a medical facility by the State of California and has no licensed medical provider who provides or directly supervises the provision of services."

Proponents of the bill contend that this notice is needed to ensure that pregnant women in California know when they are getting medical care from licensed professionals. According to the author, the bill is intended to ensure that unlicensed facilities that advertise and provide pregnancy testing and care must advise clients, at the time they are seeking or obtaining care, that these facilities are not licensed to provide medical care.

Most of the opposition letters received by the Committee object to the licensed facility notice as violation of free speech rights, but the letters make no allegation that the unlicensed facility notice is in similar violation of those rights. Some opponents, however, object that this provision requires non-licensed clinics to post language that is untrue because, they contend, many of the non-licensed clinics have licensed medical staff on site as the clinics prepare to obtain their licenses.

As detailed below, the Committee's analysis of the free speech issues indicates that the unlicensed facility notice is content-based and would likely be considered viewpoint-neutral commercial speech. As such, the required notice would be subject to rational basis scrutiny and would likely be found to be permissible under that standard. Even if the notice were subjected to strict scrutiny, the notice may very well be held constitutional in light of two recent court decisions, described below, that upheld similar notices required for unlicensed facilities after applying strict scrutiny.

A. The Unlicensed Facility Notice will be Construed a Content-Based Regulation. Since the unlicensed facility notice relates to a specific subject matter, the notice will be construed as a content-based regulation. Moreover, any compelled speech regulation is generally analyzed as a content-based restriction. (*See Riley, supra,* at p. 795.) Accordingly, the level of scrutiny a court applied would depend on whether this bill were found to trigger viewpoint discrimination, or to be targeting commercial speech.

B. The Unlicensed Facility Notice is Viewpoint Neutral. As stated above, viewpoint discrimination occurs when the government not only targets a certain subject matter, but also targets a particular point of view taken by speakers on that a specific subject matter. (*See Rosenberger, supra,* at p. 829.)

Here, the notice required of an unlicensed facility does not take a particular point of view. The notice simply requires an unlicensed facility to state

uncontrovertibly that it is not a medical facility (if it is not licensed). Accordingly, the notice is viewpoint neutral.

C. The Unlicensed Facility Notice Will be Likely be Construed as Commercial Speech. As previously mentioned, the line between commercial and noncommercial speech is not always clear. To determine whether the speech that is being regulated is commercial or noncommercial, a reviewing court looks at the *Bolger* factors: (i) the advertising format of the speech, (ii) the speech's reference to a specific product, and (iii) the underlying economic motive of the speaker. (*Lungren, supra*, at p. 728.)

Here, the speech and notice likely meets the *Bolger* factors. First, the format of the notice is required to be in advertising materials, and onsite in areas where there is an initial contact between the client and the facility. (*See American Academy of Pain Management v. Joseph* (9th Cir. 2004) 353 F .3d 1099, 1106, finding that "advertising" was sufficient for the first *Bolger* "format" factor.) Second, the speech here is related to a pregnancy-related health service, which is considered a product. (*See Joseph, supra*, at p. 1106, finding that "medical services" was a specific product for the second *Bolger* factor.)

While the third *Bolger* factor for the unlicensed facilities notice may be a closer question, a court would likely find that the unlicensed facility has an economic motive. If the facility charges a fee, that is generally sufficient to establish an economic motive. However, a facility that does not charge a fee may

still be construed as having an economic motive because it attracts clients and patients in order to perform health services, rather than to exchange ideas. (*See Greater Baltimore Center for Pregnancy Concerns, Inc. v. Mayor and City Council of Baltimore* (4th Cir. 2013) 721 F.3d 264, 286, *citing Fargo Women's Health Organization, Inc. v. Larson* (1986) 381 N.W.2d 176, 180-81, "the degree, if any, that monies are received by the [nonprofit] from its clients is not dispositive of the commercial speech issue" [internal citations omitted].)Accordingly, it seems likely that the speech required under this bill would be construed as commercial speech, and a reviewing court would likely apply rational basis scrutiny. (*Zauderer*, *supra*, at p. 638.)

D. The Unlicensed Facility Notice Will Likely Survive Rational Basis Scrutiny. As previously stated, the author has stated that the government's compelling interest is to ensure that women who are pregnant are fully notified about the continuum of health care services available in the state.

Given that the notice required of unlicensed facilities is about promoting transparency and avoiding consumer confusion, a court is likely to apply rational basis scrutiny. Here, the notice required of unlicensed facilities is reasonably related to the state's interest in ensuring that pregnant women are fully notified about the continuum of health care services available in the state. The notice is a fact-specific, incontrovertible statement aimed at informing a patient about the kinds of services a facility provides. (*See Sorrell*, *supra*, at pp. 113-114.)

Additionally, because the state wants to ensure that a woman knows about all of her health care options, a notice informing the woman about the lack of a health care professional informs her that certain health care services are unavailable. Understanding that certain health care services are not available assists a consumer of health-related services to avoid confusion or deception about the kind of care that an unlicensed facility may provide. (*See Zauderer, supra*, at p. 638.) Thus, the unlicensed facility notice will likely survive rational basis scrutiny.

E. Even If A Court Were to Apply Strict Scrutiny, The Unlicensed Facility Notice Will Likely Pass Constitutional Muster. Similar notices—like the notice that is required of an unlicensed facility under this bill—were upheld in two Circuit Courts of Appeals that applied strict scrutiny.

In *Centro Tepayac v. Montgomery County*, the Fourth Circuit reviewed a 2010 resolution passed by the Montgomery County Council that regulated pregnancy service centers. (*Centro Tepayac v. Montgomery County*. (4th Cir. 2013) 722 F.3d 184, 189.) The Montgomery Resolution required a pregnancy service center that did not have a licensed medical professional on staff to post a sign stating that "the Center does not have a licensed medical professional on staff." (*Id.* at p. 189.) The Centro Tepayac, a nonprofit organization that operated a limited pregnancy resource center, challenged the law. The Fourth Circuit upheld the law and the lower court's application of strict scrutiny. The court found that the government had a compelling interest

to ensure that women were able to obtain needed medical care, and that women did not forgo medical treatment. The notice was narrowly tailored because it notified patients "in neutral language [stating] the truth that a licensed medical professional is not on staff, [and the notice] does not require any other specific message." (*Id.* at p. 190 [internal quotations omitted.) Accordingly, the Resolution was constitutional.

In *Evergreen Ass'n, Inc. v. City of New York*, the Second Circuit reviewed a 2011 City of New York ordinance that regulated pregnancy service centers. (*Evergreen Ass'n, Inc. v. City of New York* (2nd Cir. 2014) 740 F.3d 233, 238.) Among other things, the New York Ordinance required a pregnancy service center to disclose whether the center had "a licensed medical provider on staff who provides or directly supervises the provision of all of the services at such pregnancy service center." (*Ibid.*) Evergreen Association, Inc. challenged the law on several arguments, including on First Amendment grounds. Similar to the Fourth Circuit, the Second Circuit applied strict scrutiny to the notice and upheld the law. The court held that "striking down the [disclosure] would deprive the City of its ability to protect the health of its citizens and combat consumer deception in even the most minimal way." (*Id*, at p. 247.)

Specifically, the *Evergreen* court stated that the government had a compelling interest "to ensure that women have prompt access to the type of care they seek" and "to prevent [women] from mistakenly concluding that pregnancy services centers, which

look like medical facilities, are medical facilities, whether or not the centers engage in deception." (*Evergreen Ass'n, Inc., supra*, at p. 247.) The law was narrowly tailored because alternatives like city-sponsored advertisements and prosecuting fraud, false advertising, or the unauthorized practice of medicine would not achieve the City's interest. (*Ibid.*) Specifically, the alternatives would not alert consumers "as to whether a *particular* pregnancy services center employs a licensed medical provider, because, among other things, this is discrete factual information known only to the particular center." (*Ibid* [original emphasis].) Moreover, "[e]nforcement of fraud or other laws occurs only after the fact, at which point the reproductive service sought may be ineffectual or unobtainable." (*Ibid.*) Thus, the notice required of unlicensed facilities will likely pass constitutional muster, whether a court reviews the law under rational basis or strict scrutiny.

ENFORCEMENT PROVISIONS. The bill authorizes modest civil penalties to be imposed if, after having been given notice of noncompliance and 30 days in which to correct a violation, the facility still fails to comply with these provisions. This bill also requires the Attorney General (AG) to post and maintain on the DOJ Internet Web site a list of the covered facilities upon which a penalty has been imposed for noncompliance. Because the bill allows an enforcement action against a covered facility to be brought by a city attorney or county counsel in addition to the AG, the author may wish to consider clarifying how the list of previous violators will be maintained and kept current to reflect actions brought by an entity other than the AG.

ARGUMENTS IN SUPPORT: In support of the bill, NARAL Pro-Choice California writes:

> As a national leader for reproductive freedom, the state of California has numerous laws on the books supporting women and providing assistance for low-income residents. However, many women are unaware of the truly comprehensive support the state has to offer. This legislation ensures California women receive the information they need to access affordable health care and make the best decisions regarding family planning.
>
> Distributing a notice of reproductive health services would ensure that women in any reproductive health or pregnancy counseling facility know that California respects their rights and provides assistance. Disclosing the unlicensed status of a facility allows women to make fully informed decisions. AB 775, the Reproductive FACT Act, will help ensure that the intent of California's strong laws that protect reproductive freedom is fully realized.

In support of the bill, the League of Women Voters of California writes:

> AB 775 requires licensed and unlicensed facilities to provide their parents information they need to understand their rights and the full range of medical care available to them so as to make the best decisions regarding

> family planning. It also ensures that women are informed that the facility they use is a licensed medical facility that provides actual medical services or is an unlicensed facility that cannot provide the full range of services...
>
> [A] woman's constitutional right of privacy to make reproductive choices and to have access to a basic level of health care includes all aspects of family planning. The right to make reproductive choices is empty of content if a woman lacks the ability to obtain the services she chooses because she lacks information about her rights, the services available, and the ability of the facility she is in to provide them.

ARGUMENTS IN OPPOSITION: The California Catholic Conference (CCC) opposes this bill, stating:

> The bill proposes to regulate the state's pregnancy centers, but in actuality is aimed at discriminating against those pregnancy centers that hold a pro-life viewpoint. Such unfair legislation may discourage women from getting the assistance that they need and deserve as well as expose many of these pregnancy centers to needless criminal or civil sanctions for failure to comply. Because we believe all life is sacred, we support programs which offer medical, economic and emotional support for pregnant women and children, so that they can make life-affirming choices.

The Committee has received hundreds of letters expressing opposition to the bill from operators of pregnancy centers and their supporters. For example, Pregnancy Counseling Center writes:

> Women are smart and they know that they have options regarding their pregnancy. Not all pregnant women want a referral to a government agency that funds abortions. Pregnant women seek out abortion-alternative organizations because they do not want to go to an abortion-provider to discuss their options.

The National Institute of Family & Life Advocates writes in opposition:

> AB 775 basically requires non-profit organizations that lawfully promote a woman's right to make a fully informed decision about her pregnancy to announce what services they do not provide and force them to refer in violation of their conscience. A law such as this, while targeted at pro-women groups, would set a terrible precedent and its rational could be used against many other forms of speech... There are alternative methods to spread the word about public healthcare programs other than to force one type of organization, targeted for their religious and philosophical beliefs, to advertise them. There are other laws that are in effect, such as laws against fraud and deceptive practices, which are available to remedy a situation where deceptive practices

are in fact occurring. Forcing speech is not the solution.

REGISTERED SUPPORT/OPPOSITION:

Support

Black Women for Wellness (co-sponsor)
NARAL Pro Choice California (co-sponsor)
ACT for Women and Girls
American Congress of Obstetricians and Gynecologists
American Nurses Association, California
California Association for Nurse Practitioners
California Council of Churches IMPACT
California Latinas for Reproductive Justice
California Pan-Ethnic Health Network
California Primary Care Association
California Women's Law Center
California Women Lawyers
The Center on Reproductive Rights and Justice
Forward Together
Fresno Barrios Unidos
League of Women Voters of California
Maternal And Child Health Access
National Abortion Federation
National Council of Jewish Women, California
Planned Parenthood Affiliates of California
Religious Coalition for Reproductive Choice, California
Western Methodist Justice Movement
Women's Community Clinic
Women's Health Specialists

Opposition

Alliance Defending Freedom
Birth Choice
California Catholic Conference
California Right to Life Committees, Inc.
Caring for Women Pregnancy Resource Center
Conejo Pregnancy Center
Fallbrook Pregnancy Resource Center
Horizon Pregnancy Clinic
Life Choices
Network Medical Women's Center
Pacific Justice Institute Center for Public Policy
Pregnancy Care Center
Pregnancy Care Clinic
Pregnancy Counseling Center
Whittier Life Centers, Inc.
Women's Pregnancy Care Clinic
Hundreds of Individuals

Analysis Prepared by: Eric Dang and Anthony Lew / JUD. / (916) 319-2334

EXHIBIT C

ASSEMBLY THIRD READING
AB 775 (Chiu and Burke)
As Amended May 4, 2015
Majority Vote

Committee	Votes	Ayes	Noes
Health	12-5	Bonta, Bonilla, Burke, Chiu, Gomez, Gonzalez, Nazarian, Ridley-Thomas, Rodriguez, Santiago, Thurmond, Wood	Maienschein, Chavez, Lackey, Patterson, Waldron
Judiciary	7-3	Mark Stone, Alejo, Chau, Chiu, Cristina Garcia, Holden, O'Donnell	Wagner, Gallagher, Maienschein

SUMMARY: Requires licensed clinics that provide family planning or pregnancy-related services to provide a notice to consumers regarding their reproductive rights and the availability of services in California. Requires unlicensed facilities that provide pregnancy-related services to disseminate and post a notice informing consumers that they are not a licensed medical facility and to include the notice in their advertising materials.

FISCAL EFFECT: None

COMMENTS:

1) **Purpose of this bill.** According to the author, California has a proud legacy of respecting reproductive freedom and funding forward thinking programs to provide reproductive health assistance to low income women. The author notes that according to the Department of Health Care Services, the Patient Protection and Affordable Care Act expansion has made millions of Californians, 53% of them women, newly eligible for Medi-cal. The author states because pregnancy decisions are time sensitive, California women should receive information about their rights and available services at the sites where they obtain care.

   The author contends that, unfortunately, there are nearly 200 licensed and unlicensed clinics known as crisis pregnancy centers (CPCs) in California whose goal is to interfere with a woman's ability to be fully informed

and exercise their reproductive rights, and that CPCs pose as full-service women's health clinics, but aim to discourage and prevent women from seeking abortions. The author concludes that these intentionally deceptive advertising and counseling practices often confuse, misinform, and even intimidate women from making fully-informed, time-sensitive decisions about critical health care.

2) **Background.** CPCs are facilities, both licensed and unlicensed, which present themselves as comprehensive reproductive health centers, but are commonly affiliated with, or run by organizations whose stated goal is to prevent women from accessing abortions. A 2015 NARAL Pro-Choice America report on CPCs notes that the National Institute of Family and Life Advocates (an organization with over 1,300 CPC affiliates) states on its Web site that it is on the front line of the cultural battle over abortion, and its vision is to provideCPCs with legal resources and counsel, with the aim of developing a network of life-affirming ministries in every community across the nation in order to achieve an abortion-free America. The NARAL report also sent several researchers into CPCs to receive the counseling offered, and they widely reported that they were provided with inaccurate information, including only being given information regarding the risks of abortion, being told that many women commit suicide

after having an abortion, and being told abortions can cause breast cancer.

In fall of 2009 the Assembly Business, Professions and Consumer Protection Committee, concerned that CPCs throughout California were disseminating medically inaccurate information about pregnancy options available in the state, requested a report by the University of California, Hastings College of Law regarding CPCs' practices and potential legislative options for regulating them Completed in December of 2010, "Pregnancy Resource Centers: Ensuring Access and Accuracy of Information," discusses several options for regulation of CPCs, ranging from creating new regulations, leveraging existing regulations aimed specifically at medical services, as well as creating a new statute. Because approaches that have treated CPCs and full-service pregnancy centers differently have been challenged as violating the First Amendment, the report concludes that the best approach to a statutory change would regulate all pregnancy centers, not just CPCs, in a uniform manner, which is the approach that this bill adopts.

3) **Support.** Black Women for Wellness and NARAL Pro-Choice, California the co-sponsors of this bill as well as numerous other organizations, including, California Council of Churches IMPACT, California Latinas for Reproductive Justice, Maternal and Child

Health Access, and Planned Parenthood, California, support this bill because it requires unlicensed facilities that provide pregnancy-related care to inform clients that they are not a licensed medical facility and do not have a licensed provider on staff, enabling women to seek the care they wish to obtain and providing context for counseling given at these unlicensed facilities. They also state that distributing a notice of reproductive health services would ensure that women in any reproductive health or pregnancy counseling facility know that California respects their rights and provides assistance.

4) **Opposition.** The California Catholic Conference (CCC) opposes this bill stating, on its surface, this bill proposes to regulate the state's pregnancy centers, but in actuality is aimed at discriminating against those pregnancy centers that hold a pro-life viewpoint. CCC contends that such unfair legislation may discourage women from getting the assistance that they need and deserve as well as expose many of these pregnancy centers to needless criminal or civil sanctions for failure to comply. CCC concludes that because they believe all life is sacred, they support programs which offer medical, economic and emotional support for pregnant women and children, so that they can make life-affirming choices.

Analysis Prepared by: Lara Flynn / HEALTH / (916) 319-2097 FN: 0000399

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES d/b/a NIFLA, a Virginia corporation; PREGNANCY CARE CENTER d/b/a PREGNANCY CARE CLINIC, a California corporation; and FALLBROOK PREGNANCY RESOURCE CENTER, Plaintiffs, v.	Case No. 15CV2277 JAH DHB Action Filed: October 13, 2015 **VERIFIED ANSWER OF DEFENDANT THOMAS MONTGOMERY IN HIS OFFICIAL CAPACITY AS COUNTY COUNSEL FOR SAN DIEGO COUNTY**

KAMALA HARRIS, in her official capacity as Attorney General for the State of California; THOMAS MONTGOMERY, in his official capacity as County Counsel for San Diego County; MORGAN FOLEY, in his official capacity as City Attorney for the City of El Cajon, CA; and EDMUND G. BROWN, JR., in his official capacity as Governor of the State of California, Defendants.	)))

3. Thomas Montgomery denies the allegations contained in paragraph 3.

4. Thomas Montgomery admits the allegations contained in paragraph 4.

5. Thomas Montgomery denies the allegations contained in paragraph 5.

6. Thomas Montgomery admits the allegations contained in paragraph 6.

7. Thomas Montgomery denies the allegations contained in paragraph 7.

8. Thomas Montgomery denies the allegations contained in paragraph 8.

9. Thomas Montgomery denies the allegations contained in paragraph 9.

10. Thomas Montgomery denies the allegations contained in paragraph 10.

11. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11.

12. Thomas Montgomery denies the allegations contained in paragraph 12.

13. Thomas Montgomery admits the allegations contained in paragraph 13.

14. Thomas Montgomery denies the allegations contained in paragraph 14

JURISDICTION AND VENUE

15. Thomas Montgomery admits the allegations contained in paragraph 15.

16. Thomas Montgomery admits the allegations contained in paragraph 16.

JURISDICTION AND VENUE

Plaintiffs

17. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17.

18. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18.

19. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19.

20. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20.

21. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21.

22. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22.

Defendants

23. Thomas Montgomery admits the allegations contained in paragraph 23.

24. Thomas Montgomery denies the allegations contained in paragraph 24.

25. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25.

26. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26.

FACTUAL ALLEGATIONS

27. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27.

Pregnancy Care Clinic

28. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28.

29. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29.

30. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

31. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31.

32. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32.

33. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33.

34. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34.

35. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35.

36. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36.

Fallbrook Pregnancy Center

37. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37.

38. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38.

39. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39.

40. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40.

National Institute of Family and Life Advocates

41. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41.

42. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42.

43. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43.

44. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44.

45. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45.

46. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46.

47. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 47.

48. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 48.

49. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 49.

50. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50.

51. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51.

52. Thomas Montgomery denies the allegations contained in paragraph 52.

53. Thomas Montgomery denies the allegations contained in paragraph 53.

54. Thomas Montgomery denies the allegations contained in paragraph 54.

55. Thomas Montgomery denies the allegations contained in paragraph 55.

Assembly Bill 775, the Reproductive FACT Act

56. Thomas Montgomery admits the allegations contained in paragraph 56.

57. Thomas Montgomery admits the allegations contained in paragraph 57.

58. Thomas Montgomery admits the allegations contained in paragraph 58.

59. Thomas Montgomery admits the allegations contained in paragraph 59.

60. Thomas Montgomery admits the allegations contained in paragraph 60.

61. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61.

62. Thomas Montgomery denies the allegations contained in paragraph 62.

63. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 63.

64. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 64.

65. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 65.

66. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66.

67. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 67.

68. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68.

69. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69.

70. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70.

71. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71.

72. Thomas Montgomery admits the allegations contained in paragraph 72.

73. Thomas Montgomery admits the allegations contained in paragraph 73.

74. Thomas Montgomery admits the allegations contained in paragraph 74.

75. Thomas Montgomery admits the allegations contained in paragraph 75.

76. Thomas Montgomery admits the allegations contained in paragraph 76.

77. Thomas Montgomery admits the allegations contained in paragraph 77.

78. Thomas Montgomery denies the allegations contained in paragraph 78.

79. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79.

80. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80.

81. Thomas Montgomery denies the allegations contained in paragraph 81.

82. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82.

83. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 83.

84. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 84.

85. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85.

86. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 86.

87. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 87.

88. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 88.

89. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 89.

90. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 90.

91. Thomas Montgomery denies the allegations contained in paragraph 91.

92. Thomas Montgomery denies the allegations contained in paragraph 92.

93. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 93.

94. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 94.

95. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 95.

96. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 96.

97. Thomas Montgomery admits the allegations contained in paragraph 97.

98. Thomas Montgomery denies the allegations contained in paragraph 98.

99. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 99.

100. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 100.

101. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 101.

102. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 102.

103. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103.

104. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 104.

105. Thomas Montgomery admits the allegations contained in paragraph 105.

106. Thomas Montgomery denies the allegations contained in paragraph 106.

107. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 107.

108. Thomas Montgomery denies the allegations contained in paragraph 108.

109. Thomas Montgomery denies the allegations contained in paragraph 109.

110. Thomas Montgomery denies the allegations contained in paragraph 110.

111. Thomas Montgomery denies the allegations contained in paragraph 111.

112. Thomas Montgomery denies the allegations contained in paragraph 112.

113. Thomas Montgomery admits the allegations contained in paragraph 113.

114. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 114.

115. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 115.

116. Thomas Montgomery admits the allegations contained in paragraph 116.

117. Thomas Montgomery admits the allegations contained in paragraph 117.

118. Thomas Montgomery denies the allegations contained in paragraph 118.

119. Thomas Montgomery denies the allegations contained in paragraph 119.

120. Thomas Montgomery is without knowledge or information sufficient to form a belief

as to the truth of the allegations contained in paragraph 120.

121. Thomas Montgomery denies the allegations contained in paragraph 121.

122. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 122.

123. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 123.

124. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 124.

125. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 125.

126. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 126.

127. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 127.

128. Thomas Montgomery denies the allegations contained in paragraph 128.

129. Thomas Montgomery denies the allegations contained in paragraph 129.

130. Thomas Montgomery denies the allegations contained in paragraph 130.

131. Thomas Montgomery denies the allegations contained in paragraph 131.

132. Thomas Montgomery denies the allegations contained in paragraph 132.

133. Thomas Montgomery denies the allegations contained in paragraph 133.

134. Thomas Montgomery denies the allegations contained in paragraph 134.

135. Thomas Montgomery denies the allegations contained in paragraph 135.

136. Thomas Montgomery denies the allegations contained in paragraph 136.

137. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 137.

138. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 138.

139. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 139.

140. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 140.

141. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 141.

142. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 142.

143. Thomas Montgomery denies the allegations contained in paragraph 143.

144. Thomas Montgomery admits the allegations contained in paragraph 144.

145. Thomas Montgomery denies the allegations contained in paragraph 145.

146. Thomas Montgomery denies the allegations contained in paragraph 146.

147. Thomas Montgomery denies the allegations contained in paragraph 147.

148. Thomas Montgomery denies the allegations contained in paragraph 148

CLAIMS FOR RELIEF

FIRST CLAIM

VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

149. Thomas Montgomery incorporates by reference his responses to paragraphs 1 through 148.

150. Thomas Montgomery admits the allegations contained in paragraph 70.

151. Thomas Montgomery admits the allegations contained in paragraph 151.

152. Thomas Montgomery denies the allegations contained in paragraph 152.

153. Thomas Montgomery denies the allegations contained in paragraph 153.

154. Thomas Montgomery denies the allegations contained in paragraph 154.

155. Thomas Montgomery denies the allegations contained in paragraph 155.

156. Thomas Montgomery denies the allegations contained in paragraph 156.

157. Thomas Montgomery denies the allegations contained in paragraph 157.

158. Thomas Montgomery denies the allegations contained in paragraph 158.

159. Thomas Montgomery denies the allegations contained in paragraph 159.

160. Thomas Montgomery denies the allegations contained in paragraph 160.

161. Thomas Montgomery denies the allegations contained in paragraph 161.

162. Thomas Montgomery denies the allegations contained in paragraph 162.

163. Thomas Montgomery denies the allegations contained in paragraph 163.

164. Thomas Montgomery denies the allegations contained in paragraph 164.

165. Thomas Montgomery denies the allegations contained in paragraph 165.

166. Thomas Montgomery denies the allegations contained in paragraph 166.

167. Thomas Montgomery denies the allegations contained in paragraph 167.

168. Thomas Montgomery denies the allegations contained in paragraph 168.

169. Thomas Montgomery denies the allegations contained in paragraph 169.

SECOND CLAIM

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION: ALLEGED BY THE NON-LICENSED PLAINTIFF FACILITIES

170. Thomas Montgomery incorporates by reference his responses to paragraphs 1 through 170.

171. Thomas Montgomery denies the allegations contained in paragraph 171.

172. Thomas Montgomery admits the allegations contained in paragraph 172.

173. Thomas Montgomery denies the allegations contained in paragraph 173.

174. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 174.

175. Thomas Montgomery denies the allegations contained in paragraph 175.

176. Thomas Montgomery denies the allegations contained in paragraph 176.

177. Thomas Montgomery denies the allegations contained in paragraph 177.

178. Thomas Montgomery denies the allegations contained in paragraph 178.

179. Thomas Montgomery denies the allegations contained in paragraph 179.

THIRD CLAIM

VIOLATION OF THE RIGHTS OF PLAINTIFF FACILITIES UNDER THE FIRST AMENDMENT'S FREE EXERCISE OF RELIGION CLAUSE

180. Thomas Montgomery incorporates by reference his responses to paragraphs 1 through 179.

181. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 181.

182. Thomas Montgomery is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 182.

183. Thomas Montgomery denies the allegations contained in paragraph 183.

184. Thomas Montgomery denies the allegations contained in paragraph 184.

185. Thomas Montgomery denies the allegations contained in paragraph 185.

186. Thomas Montgomery denies the allegations contained in paragraph 186.

187. Thomas Montgomery denies the allegations contained in paragraph 187.

188. Thomas Montgomery denies the allegations contained in paragraph 188.

189. Thomas Montgomery denies the allegations contained in paragraph 189.

190. Thomas Montgomery denies the allegations contained in paragraph 190.

191. Thomas Montgomery denies the allegations contained in paragraph 191.

192. Thomas Montgomery denies the allegations contained in paragraph 192.

FOURTH CLAIM

VIOLATION OF THE COATS-SNOWE AMENDMENT, 42 U.S.C. §238N, ALLEGED BY THE LICENSED MEDICAL PLAINTIFF FACILITIES.

193. Thomas Montgomery incorporates by reference his responses to paragraphs 1 through 192.

194. Thomas Montgomery denies the allegations contained in paragraph 194.

195. Thomas Montgomery denies the allegations contained in paragraph 195.

196. Thomas Montgomery denies the allegations contained in paragraph 196.

197. Thomas Montgomery denies the allegations contained in paragraph 197.

FIFTH CLAIM

VIOLATION OF THE FREE SPEECH CLAUSE OF THE CALIFORNIA CONSTITUTION, ART. 1, SEC 2(A), ALLEGED BY ALL PLAINTIFF FACILITIES

198. Thomas Montgomery incorporates by reference his responses to paragraphs l through 197.

199. Thomas Montgomery admits the allegations contained in paragraph 199.

200. Thomas Montgomery admits the allegations contained in paragraph 200.

201. Thomas Montgomery denies the allegations contained in paragraph 201.

202. Thomas Montgomery denies the allegations contained in paragraph 202.

203. Thomas Montgomery denies the allegations contained in paragraph 203.

204. Thomas Montgomery denies the allegations contained in paragraph 204.

205. Thomas Montgomery denies the allegations contained in paragraph 205.

206. Thomas Montgomery denies the allegations contained in paragraph 206.

207. Thomas Montgomery denies the allegations contained in paragraph 207.

208. Thomas Montgomery denies the allegations contained in paragraph 208.

209. Thomas Montgomery denies the allegations contained in paragraph 209.

210. Thomas Montgomery denies the allegations contained in paragraph 210.

211. Thomas Montgomery denies the allegations contained in paragraph 211.

212. Thomas Montgomery denies the allegations contained in paragraph 212.

213. Thomas Montgomery denies the allegations contained in paragraph 213.

214. Thomas Montgomery denies the allegations contained in paragraph 214.

215. Thomas Montgomery denies the allegations contained in paragraph 215.

216. Thomas Montgomery denies the allegations contained in paragraph 216.

217. Thomas Montgomery denies the allegations contained in paragraph 217.

AFFIRMATIVE DEFENSES

1

(Failure to State Causes of Action)

As a first, separate and distinct affirmative defense, defendant Thomas Montgomery alleges that the complaint fails to state facts sufficient to constitute a cause of action upon which relief can be granted.

2

(Ripeness)

As a second, separate and distinct affirmative defense, defendant Thomas Montgomery alleges that all the plaintiffs' causes of action are barred because they are not ripe for adjudication.

WHEREFORE, said defendants pray as follows:

1. That the action be dismissed with prejudice;

2. That plaintiffs take nothing by their action;

3. That defendant Thomas Montgomery recovers his costs of suit incurred herein, including attorneys' fees; and

4. For such other and further relief as the Court deems proper and just.

DATED:

THOMAS E. MONTGOMERY,
County Counsel

By **s/Thomas D. Bunton**
THOMAS D. BUNTON,
Chief Deputy
Attorneys for Defendant
Thomas Montgomery

* * * *

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EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE SECTION 6103

Attorneys for Defendant Morgan Foley, in his official capacity as City Attorney for the City of El Cajon

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES d/b/a NIFLA, a Virginia corporation; PREGNANCY CARE CENTER d/b/a PREGNANCY CARE CLINIC, a California corporation; and FALLBROOK PREGNANCY RESOURCE CENTER, a California corporation, Plaintiffs,	CASE NO. 15-cv-2277 JAH DHB **ANSWER TO VERIFIED COMPLAINT FOR DECLARATORY, INJUNCTIVE AND OTHER RELIEF** Judge: John A. Houston Courtroom: 13B Magistrate Judge: David H. Bartick

v. KAMALA HARRIS, in her official capacity as Attorney General for the State of California; THOMAS MONTGOMERY, in his official capacity as County General Counsel for San Diego County; MORGAN FOLEY, in his official capacity as City Attorney for the City of El Cajon, CA; and EDMOND G. BROWN, JR., in his official capacity as Governor of the State of California; Defendants.	Complaint Filed: October 13, 2015

Defendant, Morgan Foley, in his official capacity as City Attorney for the City of El Cajon ("Foley"), hereby answers plaintiffs' verified complaint as follows:

INTRODUCTION

1. In response to paragraph 1, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the

allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

2. In response to paragraph 2 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

3. In response to paragraph 3, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

4. In response to paragraph 4, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

5. In response to paragraph 5, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

6. In response to paragraph 6 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

7. In response to paragraph 7, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

8. In response to paragraph 8, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

9. In response to paragraph 9, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

10. In response to paragraph 10, defendant Foley states that the averments contained therein

are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

11. In response to paragraph 11 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

12. In response to paragraph 12, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

13. In response to paragraph 13, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

14. In response to paragraph 14 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the

allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

JURISDICTION AND VENUE

15. In response to paragraph 15, defendant Foley states that the averments contained therein are conclusions of law to which no request is required.

16. In answer to paragraph 16, defendant Foley acknowledges that venue appears to be appropriate at this point in time.

IDENTIFICATION OF THE PARTIES

17. In response to paragraph 17 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

18. In response to paragraph 18 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

19. In response to paragraph 19 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

20. In response to paragraph 20 of the complaint, defendant Foley is without sufficient

knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

21. In response to paragraph 21 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

22. In response to paragraph 22 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

23. In response to paragraph 23 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

24. In response to paragraph 24 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

25. In response to paragraph 25 of the complaint, defendant Foley admits that defendant Morgan Foley is and was at all times herein mentioned the City Attorney for the City of El Cajon. Regarding the remainder of the allegations, defendant Foley denies the allegations contained therein.

26. In response to paragraph 26 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

FACTUAL ALLEGATIONS

27. In response to paragraph 27 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

28. In response to paragraph 28 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

29. In response to paragraph 29 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

30. In response to paragraph 30 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

31. In response to paragraph 31 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the

allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

32. In response to paragraph 32 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

33. In response to paragraph 33 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

34. In response to paragraph 34 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

35. In response to paragraph 35 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

36. In response to paragraph 36 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

37. In response to paragraph 37 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the

allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

38. In response to paragraph 38 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

39. In response to paragraph 39 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

40. In response to paragraph 40 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

41. In response to paragraph 41 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

42. In response to paragraph 42 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

43. In response to paragraph 43 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the

allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

44. In response to paragraph 44 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

45. In response to paragraph 45 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

46. In response to paragraph 46 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

47. In response to paragraph 47 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

48. In response to paragraph 48 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

49. In response to paragraph 49 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the

allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

50. In response to paragraph 50 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

51. In response to paragraph 51 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

52. In response to paragraph 52 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

53. In response to paragraph 53 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

54. In response to paragraph 54 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

55. In response to paragraph 55, defendant Foley states that the averments contained therein are conclusions of law to which no request is

required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

56. In response to paragraph 56 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

57. In response to paragraph 57 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

58. In response to paragraph 58 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

59. In response to paragraph 59 of the complaint, defendant Foley states that no

affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

60. In response to paragraph 60 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

61. In response to paragraph 61 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

62. In response to paragraph 62 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

63. In response to paragraph 63 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

64. In response to paragraph 64 of the complaint, defendant Foley is without sufficient

knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

65. In response to paragraph 65 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

66. In response to paragraph 66 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

67. In response to paragraph 67 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

68. In response to paragraph 68 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

69. In response to paragraph 69 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

70. In response to paragraph 70 of the complaint, defendant Foley is without sufficient

knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

71. In response to paragraph 71 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

72. In response to paragraph 72 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

73. In response to paragraph 73 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

74. In response to paragraph 74 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and

therefore denies same and leaves plaintiffs to their proof.

75. In response to paragraph 75 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

76. In response to paragraph 76 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

77. In response to paragraph 77 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

78. In response to paragraph 78 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

79. In response to paragraph 79 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

80. In response to paragraph 80 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

81. In response to paragraph 81 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

82. In response to paragraph 82 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

83. In response to paragraph 83, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

84. In response to paragraph 84 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the

allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

85. In response to paragraph 85 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

86. In response to paragraph 86 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

87. In response to paragraph 87 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

88. In response to paragraph 88 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

89. In response to paragraph 89 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

90. In response to paragraph 90 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the

allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

91. In response to paragraph 91 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

92. In response to paragraph 92, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

93. In response to paragraph 93, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

94. In response to paragraph 94 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

95. In response to paragraph 95 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the

allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

96. In response to paragraph 96 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

97. In response to paragraph 97 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

98. In response to paragraph 98 of the complaint, defendant Foley denies each and every allegation contained therein.

99. In response to paragraph 99 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

100. In response to paragraph 100 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

101. In response to paragraph 101 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

102. In response to paragraph 102 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

103. In response to paragraph 103 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

104. In response to paragraph 104 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

105. In response to paragraph 105 of the complaint, defendant Foley denies each and every allegation contained therein.

106. In response to paragraph 106 of the complaint, defendant Foley denies each and every allegation contained therein.

107. In response to paragraph 107, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

108. In response to paragraph 108 of the complaint, defendant Foley denies each and every allegation contained therein.

109. In response to paragraph 109 of the complaint, defendant Foley denies each and every allegation contained therein.

110. In response to paragraph 110 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

111. In response to paragraph 111, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

112. In response to paragraph 112, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

113. In response to paragraph 113, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed

required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

114. In response to paragraph 114 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

115. In response to paragraph 115, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

116. In response to paragraph 116, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

117. In response to paragraph 117 of the complaint, defendant Foley denies that Morgan Foley is empowered to bring an action to impose a civil penalty pursuant to the Act. Regarding the remainder of the allegations, defendant Foley is without sufficient knowledge or information to either

admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

118. In response to paragraph 118 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

119. In response to paragraph 119, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

120. In response to paragraph 120 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

121. In response to paragraph 121 of the complaint, defendant Foley denies each and every allegation contained therein.

122. In response to paragraph 122 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

123. In response to paragraph 123 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

124. In response to paragraph 124 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

125. In response to paragraph 125, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

126. In response to paragraph 126 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

127. In response to paragraph 127 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

128. In response to paragraph 128 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the

allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

129. In response to paragraph 129, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

130. In response to paragraph 130 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

131. In response to paragraph 131 of the complaint, defendant Foley denies each and every allegation contained therein.

132. In response to paragraph 132 of the complaint, defendant Foley denies each and every allegation contained therein.

133. In response to paragraph 133 of the complaint, defendant Foley denies each and every allegation contained therein.

134. In response to paragraph 134 of the complaint, defendant Foley denies each and every allegation contained therein.

135. In response to paragraph 135 of the complaint, defendant Foley denies each and every allegation contained therein.

136. In response to paragraph 136 of the complaint, defendant Foley denies each and every allegation contained therein.

137. In response to paragraph 137, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

138. In response to paragraph 138, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

139. In response to paragraph 139 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

140. In response to paragraph 140, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed

required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

141. In response to paragraph 141, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

142. In response to paragraph 142, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

143. In response to paragraph 143 of the complaint, defendant Foley denies each and every allegation contained therein.

144. In response to paragraph 144 of the complaint, defendant Foley denies that Morgan Foley is vested with enforcing the Act against Plaintiff Facilities. Regarding the remainder of the allegations, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

145

145. In response to paragraph 145 of the complaint, defendant Foley denies each and every allegation contained therein.

146. In response to paragraph 146 of the complaint, defendant Foley denies each and every allegation contained therein.

147. In response to paragraph 147 of the complaint, defendant Foley denies each and every allegation contained therein.

148. In response to paragraph 148 of the complaint, defendant Foley denies each and every allegation contained therein.

CLAIMS FOR RELIEF

FIRST CLAIM: VIOLATION OF THE FREE SPEECH CLAUSE OF THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION

149. In response to paragraph 149, defendant Foley incorporates by reference each response to his responses set forth in paragraphs 1 through 148 inclusive, as though fully set forth herein.

150. In response to paragraph 150 of the complaint, defendant Foley admits the allegations contained therein.

151. In response to paragraph 151 of the complaint, defendant Foley admits the allegations contained therein.

152. In response to paragraph 152 of the complaint, defendant Foley denies each and every allegation contained therein.

153. In response to paragraph 153 of the complaint, defendant Foley denies each and every allegation contained therein.

154. In response to paragraph 154 of the complaint, defendant Foley denies each and every allegation contained therein.

155. In response to paragraph 155 of the complaint, defendant Foley denies each and every allegation contained therein.

156. In response to paragraph 156 of the complaint, defendant Foley denies each and every allegation contained therein.

157. In response to paragraph 157 of the complaint, defendant Foley denies each and every allegation contained therein.

158. In response to paragraph 158 of the complaint, defendant Foley denies each and every allegation contained therein.

159. In response to paragraph 159 of the complaint, defendant Foley denies each and every allegation contained therein.

160. In response to paragraph 160 of the complaint, defendant Foley denies each and every allegation contained therein.

161. In response to paragraph 161 of the complaint, defendant Foley denies each and every allegation contained therein.

162. In response to paragraph 162 of the complaint, defendant Foley denies each and every allegation contained therein.

163. In response to paragraph 163 of the complaint, defendant Foley denies each and every allegation contained therein.

164. In response to paragraph 164 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiff to their proof.

165. In response to paragraph 165 of the complaint, defendant Foley denies each and every allegation contained therein.

166. In response to paragraph 166 of the complaint, defendant Foley denies each and every allegation contained therein.

167. In response to paragraph 167, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

168. In response to paragraph 168, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

169. In response to paragraph 169 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

SECOND CLAIM: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION: ALLEGED BY THE NON-LICENSED PLAINTIFF FACILITIES

170. Defendant Foley incorporates by reference each response to its responses set forth in response to all previous paragraphs 1 through 170, inclusive, as though fully set forth herein.

171. In response to paragraph 171, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the

allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

172. In response to paragraph 172 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

173. In response to paragraph 173 of the complaint, defendant Foley denies each and every allegation contained therein.

174. In response to paragraph 174 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

175. In response to paragraph 175, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

176. In response to paragraph 176, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient

knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

177. In response to paragraph 177 of the complaint, defendant Foley denies each and every allegation contained therein.

178. In response to paragraph 178, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

179. In response to paragraph 179 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

THIRD CLAIM: VIOLATION OF THE RIGHTS OF PLAINTIFF FAMILITIES UNDER THE FIRST AMENDMENT'S FREE EXERCISE OF RELIGION CLAUSE

180. Defendant Foley incorporates by reference each response to its responses set forth in response to all previous paragraphs 1 through 180, inclusive, as though fully set forth herein.

181. In response to paragraph 181 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

182. In response to paragraph 182 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

183. In response to paragraph 183 of the complaint, defendant Foley denies each and every allegation contained therein.

184. In response to paragraph 184 of the complaint, defendant Foley denies each and every allegation contained therein.

185. In response to paragraph 185 of the complaint, defendant Foley denies each and every allegation contained therein.

186. In response to paragraph 186 of the complaint, defendant Foley denies each and every allegation contained therein.

187. In response to paragraph 187 of the complaint, defendant Foley denies each and every allegation contained therein.

188. In response to paragraph 188 of the complaint, defendant Foley denies each and every allegation contained therein.

189. In response to paragraph 189 of the complaint, defendant Foley denies each and every allegation contained therein.

190. In response to paragraph 190 of the complaint, defendant Foley denies each and every allegation contained therein.

191. In response to paragraph 191 of the complaint, defendant Foley denies each and every allegation contained therein.

192. In response to paragraph 192 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

FOURTH CLAIM: VIOLATION OF THE COATS-SNOWE AMENDMENT, 42 U.S.C. § 238N, ALLEGED BY THE LICENSED MEDICAL PLAINTIFF FACILITIES

193. Defendant Foley incorporates by reference each response to its responses set forth in response to all previous paragraphs 1 through 193, inclusive, as though fully set forth herein.

194. In response to paragraph 194 of the complaint, defendant Foley denies each and every allegation contained therein.

195. In response to paragraph 195 of the complaint, defendant Foley denies each and every allegation contained therein.

196. In response to paragraph 196 of the complaint, defendant Foley denies each and every allegation contained therein.

197. In response to paragraph 197 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

FIFTH CLAIM: VIOLATION OF THE FREE SPEECH CLAUSE OF THE CALIFORNIA CONSTITUTION, ART. I, SEC.2(A) ALLEGED BY ALL PLAINTIFF FACILITIES

198. Defendant Foley incorporates by reference each response to its responses set forth in response to all previous paragraphs 1 through 198, inclusive, as though fully set forth herein.

199. In response to paragraph 199, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

200. In response to paragraph 200, defendant Foley states that the averments contained therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

201. In response to paragraph 201 of the complaint, defendant Foley denies each and every allegation contained therein.

202. In response to paragraph 202 of the complaint, defendant Foley denies each and every allegation contained therein.

203. In response to paragraph 203 of the complaint, defendant Foley denies each and every allegation contained therein.

204. In response to paragraph 204 of the complaint, defendant Foley denies each and every allegation contained therein.

205. In response to paragraph 205 of the complaint, defendant Foley denies each and every allegation contained therein.

206. In response to paragraph 206 of the complaint, defendant Foley denies each and every allegation contained therein.

207. In response to paragraph 207 of the complaint, defendant Foley denies each and every allegation contained therein.

208. In response to paragraph 208 of the complaint, defendant Foley denies each and every allegation contained therein.

209. In response to paragraph 209 of the complaint, defendant Foley denies each and every allegation contained therein.

210. In response to paragraph 210 of the complaint, defendant Foley denies each and every allegation contained therein.

211. In response to paragraph 211 of the complaint, defendant Foley denies each and every allegation contained therein.

212. In response to paragraph 212 of the complaint, defendant Foley denies each and every allegation contained therein.

213. In response to paragraph 213 of the complaint, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

214. In response to paragraph 214 of the complaint, defendant Foley denies each and every allegation contained therein.

215. In response to paragraph 215 of the complaint, defendant Foley denies each and every allegation contained therein.

216. In response to paragraph 216, defendant Foley states that the averments contained

therein are conclusions of law to which no request is required. To the extent a response is deemed required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

217. In response to paragraph 217 of the complaint, defendant Foley states that no affirmative answer or denial is required. To the extent a response is required, defendant Foley is without sufficient knowledge or information to either admit or deny the allegations contained therein and therefore denies same and leaves plaintiffs to their proof.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

1. As a first and separate affirmative defense, defendant Foley alleges that plaintiffs lack standing and as such the complaint should be dismissed.

SECOND AFFIRMATIVE DEFENSE

2. As a second and separate affirmative defense, defendant Foley alleges that plaintiffs' claims are moot or are not ripe for adjudication and as such the complaint should be dismissed.

THIRD AFFIRMATIVE DEFENSE

3. As a third and separate affirmative defense, defendant Foley alleges that to the extent

that any claim fails to state a claim on which relief can be granted, it should be dismissed.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel-All claims for relief)

4. As a fourth and separate affirmative defense, defendant Foley alleges that plaintiffs' claims are barred by estoppel.

FIFTH AFFIRMATIVE DEFENSE

(Waiver-All claims for relief)

5. As a fifth and separate affirmative defense, defendant Foley alleges that plaintiffs' claims are barred by waiver

SIXTH AFFIRMATIVE DEFENSE

(Sovereign Immunity-All claims for relief)

6. As a sixth and separate affirmative defense, defendant Foley alleges that plaintiffs' amended complaint is barred by sovereign immunity under the Eleventh Amendment of the United States Constitution.

SEVENTH AFFIRMATIVE DEFENSE

(Uncertainty-All claims for relief)

7. As a seventh and separate affirmative defense, defendant Foley alleges that the complaint is uncertain, vague, ambiguous, improper and unintelligible.

EIGHTH AFFIRMATIVE DEFENSE

(Right to apply all other affirmative defenses reserved-All claims for relief)

8. Defendant Foley cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

WHEREFORE, the defendant Foley prays as follows:

1. That the complaint be dismissed with prejudice;

2. That plaintiffs take nothing by their complaint;

3. That defendant Foley be awarded its attorney fees and cost of suit; and

4. For such further relief as the Court deems proper.

Dated:
November 13, 2017

MCDOUGAL LOVE BOEHMER FOLEY LYON & CANLAS

By: *s/Steven E. Boehmer*
Steven E. Boehmer
Attorneys for Defendant, Morgan Foley, in his official capacity as City Attorney for the City of El Cajon

* * * *

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IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES dba NIFLA, a Virginia corporation; PREGNANCY CARE CENTER dba PREGNANCY CARE CLINIC, a California corporation; and FALLBROOK PREGNANCY RESOURCE CENTER,	3:15-cv-02277-JAH-DHB **ANSWER TO COMPLAINT** Judge: The Honorable John A. Houston Trial Date: N/A Action Filed: 10/13/2015

a California corporation,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as Attorney General of the State of California; THOMAS MONTGOMERY, in his official capacity as County Counsel for San Diego County; MORGAN FOLEY, in his official capacity as City Attorney for the City of El Cajon, CA; and EDMUND G. BROWN, JR., in his official capacity as Governor of the State of California,

Defendants.

Defendant Xavier Becerra ("Becerra"), in his official capacity as Attorney General of the State of California, answers plaintiffs' complaint as follows:

ANSWER TO PLAINTIFFS' INTRODUCTION

1. Answering paragraph 1 of the complaint, Becerra admits these allegations.

2. Answering paragraph 2 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

3. Answering paragraphs 3 through 10 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

4. Answering paragraph 11 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

5. Answering paragraph 12 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

6. Answering paragraph 13 of the complaint, Becerra admits these allegations.

7. Answering paragraph 14 of the complaint, Becerra denies these allegations.

ANSWER TO JURISDICTION AND VENUE ALLEGATIONS

8. Answering paragraph 15 of the complaint, Becerra avers the allegations are conclusions of law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

9. Answering paragraph 16 of the complaint, Becerra admits the allegations of the first sentence. Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation of the second sentence and denies them on that basis.

ANSWER TO PLAINTIFFS' IDENTIFICATION OF THE PARTIES

10. Answering paragraphs 17 through 22 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

11. Answering paragraph 23 of the complaint, Becerra avers that he is the current Attorney General of the State of California and is authorized to enforce the provisions of the Act. Becerra otherwise denies the allegations of this paragraph.

12. Answering paragraphs 24 and 25 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

13. Answering paragraph 26 of the complaint, Becerra avers that Edmund G. Brown Jr. is the current Governor of California and that the Court has dismissed the Governor from this case. Becerra otherwise denies the allegations of this paragraph.

ANSWER TO PLAINTIFFS' FACTUAL ALLEGATIONS

14. Answering paragraphs 27 through 55 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

15. Answering paragraphs 56 through 60 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

16. Answering paragraph 61 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

17. Answering paragraphs 62 through 64 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

18. Answering paragraphs 65 through 71 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

19. Answering paragraphs 72 through 78 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

20. Answering paragraphs 79 through 90 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

21. Answering paragraphs 91 and 92 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

22. Answering paragraphs 93 through 96 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

23. Answering paragraphs 97 and 98 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

24. Answering paragraphs 99 through 104 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

25. Answering paragraphs 105 and 106 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

26. Answering paragraph 107 of the complaint, Becerra lacks sufficient information or knowledge to

form a belief about the truth of each and every allegation and denies them on that basis.

27. Answering paragraphs 108 and 109 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

28. Answering paragraphs 110 through 111 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

29. Answering paragraphs 112 and 113 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

30. Answering paragraph 114 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

31. Answering paragraphs 115 through 117 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

32. Answering paragraphs 118 through 132 of the complaint, Becerra lacks sufficient information or knowledge to form a belief about the truth of each and every allegation and denies them on that basis.

33. Answering paragraphs 133 through 148 of the complaint, Becerra avers the allegations are plaintiffs' argument regarding the law to which no response is required. To the extent that a response is required, Becerra denies each and every allegation.

ANSWER TO FIRST CLAIM FOR RELIEF

34. Answering paragraph 149 of the complaint, Becerra incorporates by reference his responses to paragraphs 1 through 148 of the complaint to the same extent plaintiffs have incorporated the allegations of those paragraphs into the First Claim for relief.

35. Answering paragraphs 150 through 169 of the complaint, Becerra states that the matters asserted in those paragraphs constitute plaintiffs' arguments regarding the law, particularly the Act and the First Amendment to the United States Constitution, as opposed to allegations of fact. Because those provisions speak for themselves, no response to the legal and policy arguments in those paragraphs is required. To the extent the paragraphs contain any material allegations of fact, Becerra denies the allegations.

ANSWER TO SECOND CLAIM FOR RELIEF

36. Answering paragraph 170 of the complaint, Becerra incorporates by reference his responses to paragraphs 1 through 148 of the complaint to the same extent plaintiffs have incorporated the allegations of those paragraphs into the Second Claim for relief.

37. Answering paragraphs 171 through 179 of the complaint, Becerra states that the matters asserted in those paragraphs constitute plaintiffs' arguments regarding the law, particularly the Act and the Fourteenth Amendment to the United States Constitution, as opposed to allegations of fact. Because those provisions speak for themselves, no response to the legal and policy arguments in those paragraphs is required. To the extent the paragraphs contain any material allegations of fact, Becerra denies the allegations.

ANSWER TO THIRD CLAIM FOR RELIEF

38. Answering paragraph 180 of the complaint, Becerra incorporates by reference his responses to paragraphs 1 through 148 of the complaint to the same extent plaintiffs have incorporated the allegations of those paragraphs into the Third Claim for relief.

39. Answering paragraphs 181 through 192 of the complaint, Becerra states that the matters asserted in those paragraphs constitute plaintiffs' arguments regarding the law, particularly the Act and the First Amendment to the United States Constitution, as opposed to allegations of fact. Because those provisions speak for themselves, no response to the legal and policy arguments in those paragraphs is required. To the extent the paragraphs contain any material allegations of fact, Becerra denies the allegations.

ANSWER TO FOURTH CLAIM FOR RELIEF

40. Answering paragraph 193 of the complaint, Becerra incorporates by reference his responses to paragraphs 1 through 148 of the complaint to the same extent plaintiffs have incorporated the allegations of those paragraphs into the Fourth Claim for relief.

41. Answering paragraphs 194 through 197 of the complaint, Becerra states that the matters asserted in those paragraphs constitute plaintiffs' arguments regarding the law, particularly the Act and 42 U.S.C. section 238n, as opposed to allegations of fact. Because those provisions speak for themselves, no response to the legal and policy arguments in those paragraphs is required. To the extent the paragraphs contain any material allegations of fact, Becerra denies the allegations.

ANSWER TO FIFTH CLAIM FOR RELIEF

42. Answering paragraph 198 of the complaint, Becerra incorporates by reference his responses to paragraphs 1 through 148 of the complaint to the same extent plaintiffs have incorporated the allegations of those paragraphs into the Fifth Claim for relief.

43. Answering paragraphs 199 through 217 of the complaint, Becerra states that the matters asserted in those paragraphs constitute plaintiffs' arguments regarding the law, particularly the Act and California Constitution, as opposed to allegations of fact. Because those provisions speak for themselves, no response to the legal and policy

arguments in those paragraphs is required. To the extent the paragraphs contain any material allegations of fact, Becerra denies the allegations.

FIRST AFFIRMATIVE DEFENSE

(No Ripe Controversy)

44. The complaint fails to present a case or controversy that is ripe for this Court's consideration.

SECOND AFFIRMATIVE DEFENSE

(Lack of Standing)

45. All of the plaintiffs lack standing to bring this action because there is no injury or credible threat of injury. National Institute of Family and Life Advocates also lack associational standing.

PRAYER FOR RELIEF

Defendant Becerra prays for judgment as follows:

1. That plaintiffs take nothing by way of their complaint;

2. That the Court enter judgment in favor of Becerra on all claims and causes of action alleged in the complaint;

3. For costs incurred in the defense of this action; and

4. For such other and further relief as the Court may deem proper.

Dated:
November 13, 2017

Respectfully submitted,

XAVIER BECERRA
Attorney General of
California
STEPAN A. HAYTAYAN
Supervising Deputy Attorney
General

S/ *Anthony R. Hakl*

ANTHONY R. HAKL
Acting Supervising Deputy
Attorney General
Attorneys for Defendant
Xavier Becerra, in his official
capacity as Attorney General
of the State of California

* * * *

Cal. Health & Safety Code § 1204

Clinic eligible for licensure, primary care clinics and specialty clinics; classes as defined

Effective: January 1, 2001

Clinics eligible for licensure pursuant to this chapter are primary care clinics and specialty clinics.

(a)(1) Only the following defined classes of primary care clinics shall be eligible for licensure:

(A) A "community clinic" means a clinic operated by a tax-exempt nonprofit corporation that is supported and maintained in whole or in part by donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a community clinic, any charges to the patient shall be based on the patient's ability to pay, utilizing a sliding fee scale. No corporation other than a nonprofit corporation, exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a community clinic; provided, that the licensee of any community clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a community clinic.

(B) A "free clinic" means a clinic operated by a tax-exempt, nonprofit corporation supported in whole or in part by voluntary donations, bequests, gifts, grants, government funds or contributions, that may be in the form of money, goods, or services. In a free clinic there shall be no charges directly to the patient for services rendered or for drugs, medicines, appliances, or apparatuses furnished. No corporation other than a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954 as amended, or a statutory successor thereof, shall operate a free clinic; provided, that the licensee of any free clinic so licensed on the effective date of this section shall not be required to obtain tax-exempt status under either federal or state law in order to be eligible for, or as a condition of, renewal of its license. No natural person or persons shall operate a free clinic.

(2) Nothing in this subdivision shall prohibit a community clinic or a free clinic from providing services to patients whose services are reimbursed by third-party payers, or from entering into managed care contracts for services provided to private or public health plan subscribers, as long as the clinic meets the requirements identified in subparagraphs (A) and (B). For purposes of this subdivision, any payments made to a community clinic by a third-party payer, including, but not limited to, a health care service plan, shall not constitute a charge to the patient. This paragraph is a clarification of existing law.

(b) The following types of specialty clinics shall be eligible for licensure as specialty clinics pursuant to this chapter:

(1) A "surgical clinic" means a clinic that is not part of a hospital and that provides ambulatory surgical care for patients who remain less than 24 hours. A surgical clinic does not include any place or establishment owned or leased and operated as a clinic or office by one or more physicians or dentists in individual or group practice, regardless of the name used publicly to identify the place or establishment, provided, however, that physicians or dentists may, at their option, apply for licensure.

(2) A "chronic dialysis clinic" means a clinic that provides less than 24-hour care for the treatment of patients with end-stage renal disease, including renal dialysis services.

(3) A "rehabilitation clinic" means a clinic that, in addition to providing medical services directly, also provides physical rehabilitation services for patients who remain less than 24 hours. Rehabilitation clinics shall provide at least two of the following rehabilitation services: physical therapy, occupational therapy, social, speech pathology, and audiology services. A rehabilitation clinic does not include the offices of a private physician in individual or group practice.

(4) An "alternative birth center" means a clinic that is not part of a hospital and that provides comprehensive perinatal services and delivery care

to pregnant women who remain less than 24 hours at the facility.

Cal. Health & Safety Code § 1206

§ 1206. Exemptions

Effective: January 1, 2016

This chapter does not apply to the following:

(a) Except with respect to the option provided with regard to surgical clinics in paragraph (1) of subdivision (b) of Section 1204 and, further, with respect to specialty clinics specified in paragraph (2) of subdivision (b) of Section 1204, any place or establishment owned or leased and operated as a clinic or office by one or more licensed health care practitioners and used as an office for the practice of their profession, within the scope of their license, regardless of the name used publicly to identify the place or establishment.

(b) Any clinic directly conducted, maintained, or operated by the United States or by any of its departments, officers, or agencies, and any primary care clinic specified in subdivision (a) of Section 1204 that is directly conducted, maintained, or operated by this state or by any of its political subdivisions or districts, or by any city. Nothing in this subdivision precludes the state department from adopting regulations that utilize clinic licensing standards as eligibility criteria for participation in programs funded wholly or partially under Title XVIII or XIX of the federal Social Security Act.

(c)(1) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal

organization, as defined in Section 450 or 1603 of Title 25 of the United States Code, that is located on land recognized as tribal land by the federal government.

(2) Any clinic conducted, maintained, or operated by a federally recognized Indian tribe or tribal organization, as defined in Section 450 or 1603 of Title 25 of the United States Code, under a contract with the United States pursuant to the Indian Self-Determination and Education Assistance Act (Public Law 93-638), regardless of the location of the clinic, except that if the clinic chooses to apply to the State Department of Public Health for a state facility license, then the State Department of Public Health will retain authority to regulate that clinic as a primary care clinic as defined by subdivision (a) of Section 1204.

(d) Clinics conducted, operated, or maintained as outpatient departments of hospitals.

(e) Any facility licensed as a health facility under Chapter 2 (commencing with Section 1250).

(f) Any freestanding clinical or pathological laboratory licensed under Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code.

(g) A clinic operated by, or affiliated with, any institution of learning that teaches a recognized healing art and is approved by the state board or commission vested with responsibility for regulation of the practice of that healing art.

(h) A clinic that is operated by a primary care community or free clinic and that is operated on separate premises from the licensed clinic and is only open for limited services of no more than 30 hours a week. An intermittent clinic as described in this subdivision shall, however, meet all other requirements of law, including administrative regulations and requirements, pertaining to fire and life safety.

(i) The offices of physicians in group practice who provide a preponderance of their services to members of a comprehensive group practice prepayment health care service plan subject to Chapter 2.2 (commencing with Section 1340).

(j) Student health centers operated by public institutions of higher education.

(k) Nonprofit speech and hearing centers, as defined in Section 1201.5. Any nonprofit speech and hearing clinic desiring an exemption under this subdivision shall make application therefor to the director, who shall grant the exemption to any facility meeting the criteria of Section 1201.5. Notwithstanding the licensure exemption contained in this subdivision, a nonprofit speech and hearing center shall be deemed to be an organized outpatient clinic for purposes of qualifying for reimbursement as a rehabilitation center under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code).

(l) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code1 of 1954, as amended, or a statutory successor thereof, that conducts medical research and health education and provides health care to its patients through a group of 40 or more physicians and surgeons, who are independent contractors representing not less than 10 board-certified specialties, and not less than two-thirds of whom practice on a full-time basis at the clinic.

(m) Any clinic, limited to in vivo diagnostic services by magnetic resonance imaging functions or radiological services under the direct and immediate supervision of a physician and surgeon who is licensed to practice in California. This shall not be construed to permit cardiac catheterization or any treatment modality in these clinics.

(n) A clinic operated by an employer or jointly by two or more employers for their employees only, or by a group of employees, or jointly by employees and employers, without profit to the operators thereof or to any other person, for the prevention and treatment of accidental injuries to, and the care of the health of, the employees comprising the group.

(o) A community mental health center, as defined in Section 5667 of the Welfare and Institutions Code.

(p)(1) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a

statutory successor thereof, as an entity organized and operated exclusively for scientific and charitable purposes and that satisfied all of the following requirements on or before January 1, 2005:

(A) Commenced conducting medical research on or before January 1, 1982, and continues to conduct medical research.

(B) Conducted research in, among other areas, prostatic cancer, cardiovascular disease, electronic neural prosthetic devices, biological effects and medical uses of lasers, and human magnetic resonance imaging and spectroscopy.

(C) Sponsored publication of at least 200 medical research articles in peer-reviewed publications.

(D) Received grants and contracts from the National Institutes of Health.

(E) Held and licensed patents on medical technology.

(F) Received charitable contributions and bequests totaling at least five million dollars ($5,000,000).

(G) Provides health care services to patients only:

(i) In conjunction with research being conducted on procedures or applications not approved or only partially approved for payment (I) under the Medicare program pursuant to Section 1359y(a)(1)(A) of Title 42 of the United States Code, or (II) by a health care service plan registered under Chapter 2.2 (commencing with Section 1340), or a

disability insurer regulated under Chapter 1 (commencing with Section 10110) of Part 2 of Division 2 of the Insurance Code; provided that services may be provided by the clinic for an additional period of up to three years following the approvals, but only to the extent necessary to maintain clinical expertise in the procedure or application for purposes of actively providing training in the procedure or application for physicians and surgeons unrelated to the clinic.

(ii) Through physicians and surgeons who, in the aggregate, devote no more than 30 percent of their professional time for the entity operating the clinic, on an annual basis, to direct patient care activities for which charges for professional services are paid.

(H) Makes available to the public the general results of its research activities on at least an annual basis, subject to good faith protection of proprietary rights in its intellectual property.

(I) Is a freestanding clinic, whose operations under this subdivision are not conducted in conjunction with any affiliated or associated health clinic or facility defined under this division, except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as "affiliated" only if it directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a clinic or health facility defined under this division, except a clinic exempt from licensure under subdivision (m). For purposes of this subparagraph, a freestanding clinic is defined as

"associated" only if more than 20 percent of the directors or trustees of the clinic are also the directors or trustees of any individual clinic or health facility defined under this division, except a clinic exempt from licensure under subdivision (m). Any activity by a clinic under this subdivision in connection with an affiliated or associated entity shall fully comply with the requirements of this subdivision. This subparagraph shall not apply to agreements between a clinic and any entity for purposes of coordinating medical research.

(2) By January 1, 2007, and every five years thereafter, the Legislature shall receive a report from each clinic meeting the criteria of this subdivision and any other interested party concerning the operation of the clinic's activities. The report shall include, but not be limited to, an evaluation of how the clinic impacted competition in the relevant health care market, and a detailed description of the clinic's research results and the level of acceptance by the payer community of the procedures performed at the clinic. The report shall also include a description of procedures performed both in clinics governed by this subdivision and those performed in other settings. The cost of preparing the reports shall be borne by the clinics that are required to submit them to the Legislature pursuant to this paragraph.

Cal. Welf. & Inst. Code § 24005

Family planning medical services; eligibility; application to Family Planning, Access, Care, and Treatment Program

Effective: January 1, 2017

(a) This section applies to the Family Planning, Access, Care, and Treatment Program identified in subdivision (aa) of Section 14132 and this program.

(b) Only licensed medical personnel with family planning skills, knowledge, and competency may provide the full range of family planning medical services covered in this program.

(c) Medi-Cal enrolled providers, as determined by the department, shall be eligible to provide family planning services under the program when these services are within their scope of practice and licensure. Those clinical providers electing to participate in the program and approved by the department shall provide the full scope of family planning education, counseling, and medical services specified for the program, either directly or by referral, consistent with standards of care issued by the department.

(d) The department shall require providers to enter into clinical agreements with the department to ensure compliance with standards and requirements to maintain the fiscal integrity of the program. Provider applicants, providers, and persons with an ownership or control interest, as defined in federal

Medicaid regulations, shall be required to submit to the department their social security numbers to the full extent allowed under federal law. All state and federal statutes and regulations pertaining to the audit or examination of Medi-Cal providers apply to this program.

(e) Clinical provider agreements shall be signed by the provider under penalty of perjury. The department may screen applicants at the initial application and at any reapplication pursuant to requirements developed by the department to determine provider suitability for the program.

(f) The department may complete a background check on clinical provider applicants for the purpose of verifying the accuracy of information provided to the department for purposes of enrolling in the program and in order to prevent fraud and abuse. The background check may include, but not be limited to, unannounced onsite inspection prior to enrollment, review of business records, and data searches. If discrepancies are found to exist during the preenrollment period, the department may conduct additional inspections prior to enrollment. Failure to remediate significant discrepancies as prescribed by the director may result in denial of the application for enrollment. Providers that do not provide services consistent with the standards of care or that do not comply with the department's rules related to the fiscal integrity of the program may be disenrolled as a provider from the program at the sole discretion of the department.

(g) The department shall not enroll any applicant who, within the previous 10 years:

(1) Has been convicted of any felony or misdemeanor that involves fraud or abuse in any government program, that relates to neglect or abuse of a patient in connection with the delivery of a health care item or service, or that is in connection with the interference with, or obstruction of, any investigation into health care related fraud or abuse.

(2) Has been found liable for fraud or abuse in any civil proceeding, or that has entered into a settlement in lieu of conviction for fraud or abuse in any government program.

(h) In addition, the department may deny enrollment to any applicant that, at the time of application, is under investigation by the department or any local, state, or federal government law enforcement agency for fraud or abuse. The department shall not deny enrollment to an otherwise qualified applicant whose felony or misdemeanor charges did not result in a conviction solely on the basis of the prior charges. If it is discovered that a provider is under investigation by the department or any local, state, or federal government law enforcement agency for fraud or abuse, that provider shall be subject to immediate disenrollment from the program.

(i)(1) The program shall disenroll as a program provider any individual who, or any entity that, has a license, certificate, or other approval to provide health care that is revoked or suspended by a federal, California, or other state's licensing,

certification, or other approval authority, has otherwise lost that license, certificate, or approval, or has surrendered that license, certificate, or approval while a disciplinary hearing on the license, certificate, or approval was pending. The disenrollment shall be effective on the date the license, certificate, or approval is revoked, lost, or surrendered.

(2) A provider shall be subject to disenrollment if the provider submits claims for payment for the services, goods, supplies, or merchandise provided, directly or indirectly, to a program beneficiary, by an individual or entity that has been previously suspended, excluded, or otherwise made ineligible to receive, directly or indirectly, reimbursement from the program or from the Medi-Cal program and the individual has previously been listed on either the Suspended and Ineligible Provider List, which is published by the department, to identify suspended and otherwise ineligible providers or any list published by the federal Office of the Inspector General regarding the suspension or exclusion of individuals or entities from the federal Medicare and Medicaid programs, to identify suspended, excluded, or otherwise ineligible providers.

(3) The department shall deactivate, immediately and without prior notice, the provider numbers used by a provider to obtain reimbursement from the program when warrants or documents mailed to a provider's mailing address, its pay to address, or its service address, if any, are returned by the United States Postal Service as not deliverable or when a provider has not submitted a claim for

reimbursement from the program for one year. Prior to taking this action, the department shall use due diligence in attempting to contact the provider at its last known telephone number and to ascertain if the return by the United States Postal Service is by mistake and shall use due diligence in attempting to contact the provider by telephone or in writing to ascertain whether the provider wishes to continue to participate in the Medi-Cal program. If deactivation pursuant to this section occurs, the provider shall meet the requirements for reapplication as specified in regulation.

(4) For purposes of this subdivision:

(A) "Mailing address" means the address that the provider has identified to the department in its application for enrollment as the address at which it wishes to receive general program correspondence.

(B) "Pay to address" means the address that the provider has identified to the department in its application for enrollment as the address at which it wishes to receive warrants.

(C) "Service address" means the address that the provider has identified to the department in its application for enrollment as the address at which the provider will provide services to program beneficiaries.

(j) Subject to Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, the department may enter into contracts to secure consultant services or

information technology including, but not limited to, software, data, or analytical techniques or methodologies for the purpose of fraud or abuse detection and prevention. Contracts under this section shall be exempt from the Public Contract Code.

(k) Enrolled providers shall attend specific orientation approved by the department in comprehensive family planning services. Enrolled providers who insert IUDs or contraceptive implants shall have received prior clinical training specific to these procedures.

(*l*) Upon receipt of reliable evidence that would be admissible under the administrative adjudication provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, of fraud or willful misrepresentation by a provider under the program or commencement of a suspension under Section 14123, the department may do any of the following:

(1) Collect any State-Only Family Planning program or Family Planning, Access, Care, and Treatment Program overpayment identified through an audit or examination, or any portion thereof from any provider. Notwithstanding Section 100171 of the Health and Safety Code, a provider may appeal the collection of overpayments under this section pursuant to procedures established in Article 5.3 (commencing with Section 14170) of Chapter 7 of Part 3 of Division 9. Overpayments collected under this section shall not be returned to the provider during the pendency of any appeal and may be offset

to satisfy audit or appeal findings, if the findings are against the provider. Overpayments shall be returned to a provider with interest if findings are in favor of the provider.

(2) Withhold payment for any goods or services, or any portion thereof, from any State-Only Family Planning program or Family Planning, Access, Care, and Treatment Program provider. The department shall notify the provider within five days of any withholding of payment under this section. The notice shall do all of the following:

(A) State that payments are being withheld in accordance with this paragraph and that the withholding is for a temporary period and will not continue after it is determined that the evidence of fraud or willful misrepresentation is insufficient or when legal proceedings relating to the alleged fraud or willful misrepresentation are completed.

(B) Cite the circumstances under which the withholding of the payments will be terminated.

(C) Specify, when appropriate, the type or types of claimed payments being withheld.

(D) Inform the provider of the right to submit written evidence that is evidence that would be admissible under the administrative adjudication provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, for consideration by the department.

(3) Notwithstanding Section 100171 of the Health and Safety Code, a provider may appeal a withholding of payment under this section pursuant to Section 14043.65. Payments withheld under this section shall not be returned to the provider during the pendency of any appeal and may be offset to satisfy audit or appeal findings.

(m) As used in this section:

(1) "Abuse" means either of the following:

(A) Practices that are inconsistent with sound fiscal or business practices and result in unnecessary cost to the Medicaid program, the Medicare program, the Medi-Cal program, including the Family Planning, Access, Care, and Treatment Program, identified in subdivision (aa) of Section 14132, another state's Medicaid program, or the State-Only Family Planning program, or other health care programs operated, or financed in whole or in part, by the federal government or any state or local agency in this state or any other state.

(B) Practices that are inconsistent with sound medical practices and result in reimbursement, by any of the programs referred to in subparagraph (A) or other health care programs operated, or financed in whole or in part, by the federal government or any state or local agency in this state or any other state, for services that are unnecessary or for substandard items or services that fail to meet professionally recognized standards for health care.

(2) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or herself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(3) "Provider" means any individual, partnership, group, association, corporation, institution, or other entity, and the officers, directors, owners, managing employees, or agents of any partnership, group, association, corporation, institution, or other entity, that provides services, goods, supplies, or merchandise, directly or indirectly, to a beneficiary and has been enrolled in the program.

(4) "Convicted" means any of the following:

(A) A judgment of conviction has been entered against an individual or entity by a federal, state, or local court, regardless of whether there is a post-trial motion or an appeal pending or the judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed.

(B) A federal, state, or local court has made a finding of guilt against an individual or entity.

(C) A federal, state, or local court has accepted a plea of guilty or nolo contendere by an individual or entity.

(D) An individual or entity has entered into participation in a first offender, deferred

adjudication, or other program or arrangement in which judgment of conviction has been withheld.

(5) "Professionally recognized standards of health care" means statewide or national standards of care, whether in writing or not, that professional peers of the individual or entity whose provision of care is an issue, recognize as applying to those peers practicing or providing care within a state. When the United States Department of Health and Human Services has declared a treatment modality not to be safe and effective, practitioners that employ that treatment modality shall be deemed not to meet professionally recognized standards of health care. This definition shall not be construed to mean that all other treatments meet professionally recognized standards of care.

(6) "Unnecessary or substandard items or services" means those that are either of the following:

(A) Substantially in excess of the provider's usual charges or costs for the items or services.

(B) Furnished, or caused to be furnished, to patients, whether or not covered by Medicare, Medicaid, or any of the state health care programs to which the definitions of applicant and provider apply, and which are substantially in excess of the patient's needs, or of a quality that fails to meet professionally recognized standards of health care. The department's determination that the items or services furnished were excessive or of unacceptable quality shall be made on the basis of information,

including sanction reports, from the following sources:

(i) The professional review organization for the area served by the individual or entity.

(ii) State or local licensing or certification authorities.

(iii) Fiscal agents or contractors, or private insurance companies.

(iv) State or local professional societies.

(v) Any other sources deemed appropriate by the department.

(7) "Enrolled or enrollment in the program" means authorized under any and all processes by the department or its agents or contractors to receive, directly or indirectly, reimbursement for the provision of services, goods, supplies, or merchandise to a program beneficiary.

(n) In lieu of, or in addition to, the imposition of any other sanctions available, including the imposition of a civil penalty under Section 14123.2 or 14171.6, the program may impose on providers any or all of the penalties pursuant to Section 14123.25, in accordance with the provisions of that section. In addition, program providers shall be subject to the penalties contained in Section 14107.

(o)(1) Notwithstanding any other law, every primary supplier of pharmaceuticals, medical equipment, or supplies shall maintain accounting records to demonstrate the manufacture, assembly, purchase, or acquisition and subsequent sale, of any pharmaceuticals, medical equipment, or supplies, to providers. Accounting records shall include, but not be limited to, inventory records, general ledgers, financial statements, purchase and sales journals, and invoices, prescription records, bills of lading, and delivery records.

(2) For purposes of this subdivision, the term "primary supplier" means any manufacturer, principal labeler, assembler, wholesaler, or retailer.

(3) Accounting records maintained pursuant to paragraph (1) are subject to audit or examination by the department or its agents. The audit or examination may include, but is not limited to, verification of what was claimed by the provider. These accounting records shall be maintained for three years from the date of sale or the date of service.

(p) Each provider of health care services rendered to any program beneficiary shall keep and maintain records of each service rendered, the beneficiary to whom rendered, the date, and any additional information that the department may by regulation require. Records required to be kept and maintained pursuant to this subdivision shall be retained by the provider for a period of three years from the date the service was rendered.

(q) A program provider applicant or a program provider shall furnish information or copies of records and documentation requested by the department. Failure to comply with the department's request shall be grounds for denial of the application or automatic disenrollment of the provider.

(r) A program provider may assign signature authority for transmission of claims to a billing agent subject to Sections 14040, 14040.1, and 14040.5.

(s) Moneys payable or rights existing under this division shall be subject to any claim, lien, or offset of the State of California, and any claim of the United States of America made pursuant to federal statute, but shall not otherwise be subject to enforcement of a money judgment or other legal process, and no transfer or assignment, at law or in equity, of any right of a provider of health care to any payment shall be enforceable against the state, a fiscal intermediary, or carrier.

(t)(1) Notwithstanding any other law, within 30 calendar days of receiving a complete application for enrollment into the Family PACT Program from an affiliate primary care clinic licensed under Section 1218.1 of the Health and Safety Code, the department shall do one of the following:

(A) Approve the provider's Family PACT Program application, provided the applicant meets the Family PACT Program provider enrollment requirements set forth in this section.

(B) If the provider is an enrolled Medi-Cal provider in good standing, notify the applicant in writing of any discrepancies in the Family PACT Program enrollment application. The applicant shall have 30 days from the date of written notice to correct any identified discrepancies. Upon receipt of all requested corrections, the department shall approve the application within 30 calendar days.

(C) If the provider is not an enrolled Medi-Cal provider in good standing, the department shall not proceed with the actions described in this subdivision until the department receives confirmation of good standing and enrollment as a Medi-Cal provider.

(2) The effective date of enrollment into the Family PACT Program shall be the later of the date the department receives confirmation of enrollment as a Medi-Cal provider, or the date the applicant meets all Family PACT Program provider enrollment requirements set forth in this section.

(u) Providers, or the enrolling entity, shall make available to all applicants and beneficiaries prior to, or concurrent with, enrollment, information on the manner in which to apply for insurance affordability programs, in a manner determined by the State Department of Health Care Services. The information provided shall include the manner in which applications can be submitted for insurance affordability programs, information about the open enrollment periods for the California Health Benefit Exchange, and the continuous enrollment aspect of the Medi-Cal program.